United States Court of Appeals

for the Second Circuit

APPELLEE'S APPENDIX

Orig. w/affidavit of mailing

76-1458

B P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1458

UNITED STATES OF AMERICA,
Appellee,

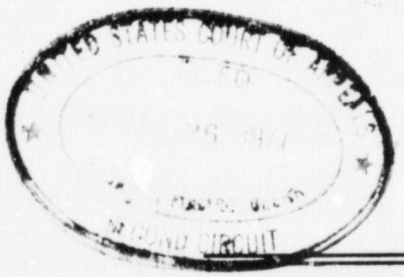
—against—

ALBERT ANZALONE and ANTHONY VIVELO,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

PAGE

Transcript of taint hearing dated July 28, 1976 A-1

Transcript of taint hearing dated September 15, 1976 ..... A-34

Transcript of ruling on taint motion dated September 24, 1976 ..... A-103

Transcript of state grand jury testimony of Albert Anzalone on April 18, 1973 (Hearing Ex. 2) A-107

Transcript of state grand jury testimony of Detective Corbett on July 14, 1972 reflecting interview of Albert Anzalone (Hearing Ex. 4) A-153

Report of Detective Corbett dated May 2, 1972 concerning interviews of Anthony Vivelo and Albert Anzalone (Hearing Ex. 4(a)) A-163

Transcript of state grand jury testimony of Fire Marshal Romero on July 14, 1972 reflecting interview of Albert Anzalone (Hearing Ex. 5) A-168

Report of Fire Marshal Romero concerning interviews of Albert Anzalone and Anthony Vivelo (Hearing Ex. 5(a)) A-180

Stipulation concerning introduction in evidence of federal grand jury testimony as set forth in indictment, and limiting instruction given to jury (excerpt from transcript of May 19, 1976) A-183

Transcript of discussion of and instruction to grand jury concerning use immunity (excerpt from transcript of April 29, 1975) A-193

Transcript of federal grand jury testimony of Albert Anzalone dated April 29, 1975 ..... A-199

Transcript of federal grand jury testimony of Anthony Vivelo dated April 29, 1975 ..... A-257

Transcript of trial testimony of Agent Savadel on May 14, 1976 ..... A-304

Typewritten statement of interview of Gerald Maddalone by Agent Savadel dated March 5, 1974 (Trial Ex. 12) A-326

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

Plaintiff :

against :

ALBERT ANZALONE, : 75 CR 751

Defendant :

----------x

United States Courthouse
Brooklyn, New York

July 28, 1976
4:00 p.m.

B e f o r e:

HONORABLE EDWARD R. NEAHER,

U.S.D.J.

HENRY SHAPIRO
Official Court Reporter

A 2

Appearances:

DAVID G. TRAGER, Esq.
United States Attorney for the
Eastern District of New York

By: RONALD DePETRIS, Esq.
Assistant U.S. Attorney

BARRY AGULNICK, Esq.
Attorney for Defendant

By: WILLIAM GOGEL, Esq.,
of counsel

THE CLERK: Criminal hearing, United States against Albert Anzalone.

MR. DE PETRIS: Ronald DePetris. Good afternoon.

MR. GOGEL: Good afternoon.

MR. DE PETRIS: We have one more piece of that hearing to present today. I understand the hearing has been adjourned to September 8th. However, Mr. Kaufman, who is our next witness, will be on vacation at that time, so we are presenting him today and then adjourning the remainder for, hopefully, one last session on September 8th.

MR. GOGEL: With your Honor's permission, I am here for Mr. Agulnick, to represent Mr. Anzalone for the purpose of this witness.

THE COURT: Who is calling the witness?

MR. DE PETRIS: I am, your Honor.

THE COURT: I assume that's with the consent of Mr. Agulnick and/or his client.

MR. GOGEL: That's correct.

S E T H F. K A U F M A N, called as a witness, having been duly sworn by the Clerk of the Court, testified as follows:

THE COURT: Will I be supplied with a copy of the transcript?

MR. DE PETRIS: Yes, your Honor.

THE COURT: Because I'm not making notes.

MR. DE PETRIS: I have a copy of the two other transcripts. Has your Honor received the Court copy?

The transcript is being ordered and if there is any problem with the Court's locating its copy, I have a copy.

MR. GOGEL: I just received a copy from Mr. DePetris as to the last session.

MR. DE PETRIS: That's my copy, to be returned.

DIRECT EXAMINATION

BY MR. DE PETRIS:

Q State your name for the record.

A Seth F. Kaufman.

Q By whom are you now employed?

A New York City Department of Investigation.

Q In what capacity?

A Examining attorney.

Q Directing your attention to the time period commencing in September of '74 through June of '75, what was your status at that time?

A Law student at Brooklyn Law School, days.

Q Did you have any relationship with the

United States Attorney's office for the Eastern District of New York at that time?

A Yes, I was in a clinical program and assigned to the Eastern District U.S. Attorney's office.

Q With which assistant in the U.S. Attorney's office were you assigned to work?

A I was assigned to you, Ronald DePetris.

Q When approximately did you commence your duties in that regard?

A Sometime in September of 1974.

Q And did we discuss the fact that you had been working on a number of cases during the course of your term in this program?

A Yes, when I first arrived you again re-told me the nature and range of the cases that we had been working on.

Q Was one of the cases a civil rights case involving efforts to prevent a black family from moving into a housing on Hilton Avenue, on Staten Island.

A Yes, it was.

Q Would you tell us what your first duties were in connection with that case.

A Well, there was a wealth of material on this case that had been developed, and the first thing I did was

to review all the material.

Q Do you recall when you conducted that review?

A Sometime in September of '74, maybe late September.

Q Would you tell us again, please, what the materials were which you reviewed?

A Well, there were FBI reports, there were PD reports, fire marshal reports, grand jury testimony from Staten Island, and correspondence files.

Q Did you review all those materials?

A Yes, sir.

Q I show you Exhibits 2, 4, 4-A, 5 and 5-A in this hearing in evidence and I ask you whether or not those exhibits were part of the materials which you reviewed.

A Yes, all these materials are ones that I reviewed at that time.

Q After your review of those materials, what was the next step in your duties in connection with this case?

A Well, I researched some legal points connected with the case in civil rights statutes and was just beginning legal reserach at that time.

Q And when was the next time that we got back

to this case?

A Well, there was a gap -- a period of time where there was a gap because we worked on a number of other cases, one involving Fort Hamilton and one involving Grumman Aircraft and I got back to it when there was an interview of some witnesses, and I didn't really do any paper work on it until sometime in December, I think, of that year.

Q In December of '74, will you give your next assignment in this connection with this case.

A Right. You had told me at that time that you were going to question certain witnesses at the grand jury and that I should get all the materials in the file about these witnesses Xeroxed. I just went through everything where there was the name of an individual who you were going to question, I just Xeroxed it, put it into files, and that was all I did at that time.

Q You did not draft any questions at that time; is that right?

MR. GOGEL: Objection. That's a leading question. That's a very important part of the taint question.

MR. DE PETRIS: I'll rephrase it.

Q These persons who were to appear before the

grand jury, did I advise you what I expected to happen at their initial appearances before the grand jury?"

MR. GOGEL: Objection, leading. Question calls for an answer in a yes or no.

I ask that the witness not be led.

THE COURT: Let's see what the witness recalls doing next.

MR. DE PETRIS: He has completed what he did at that time. That was a foundation question which I wanted to establish, that was all. We're not dealing with a jury here.

THE COURT: I understand. Counsel is making an objection to leading questions, which is obviously a valid objection--

MR. DE PETRIS: I'll try to rephrase it.

THE COURT: I realize it's somewhat difficult for him, since he has been away from it for quite a while--

MR. DE PETRIS: I'll rephrase the question.

THE COURT: All right.

Q Mr. Kaufman, directing your attention to those witnesses for whom you Xeroxed those materials about which you just testified, did you have any understanding with respect to their appearances before the

grand jury?

A Well, my understanding was that you had spoken with the attorneys for all these witnesses and that they were going to invoke their Fifth Amendment rights; therefore I didn't do anything else but do the Xeroxing, because there was going to be no possibility that you were going to ask them anything but just general questions before they would invoke their Fifth Amendment privilege, so there was no sense in doing anything else.

Q Did there come a time when you did Xerox these materials and provide them to me?

A Yes, it was sometime in December. I don't remember approximately when. It was in December of '74 that I Xeroxed them and put them in the folders and presented them to you.

Q Did we have a conversation at that time?

A Yes, we did.

Q What was the substance of the conversation?

A Well, I was giving you the materials at that time and you said to me, "What is contained in these folders?" and I said, "Every report about each of the individuals who was going to testify," and you said, "In Mr. Anzalone's folder is there his grand jury testimony from Staten Island?" I said yes.

You said, "Well, I think there were two or three sets of testimony on that. Was there the testimony as to transactional immunity?"

And I looked and I said there was, and you said to me, "I don't want to read that," and I asked why, and you explained to me you had the transactional immunity that was given on Staten Island, the Federal Government could not use anything from that testimony against the witness, and that you didn't even want to read it; so I took a pencil out and wrote on it, "Ron, do not read this testimony," and I -- or something to that effect, and clipped it to the back of the folder.

Q Did I give you any instructions with respect to that state grand jury testimony of Mr. Anzalone at that time?

A Not that I recall any instructions, no.

Q At that time you had read the state grand jury testimony back in September, of Mr. Anzalone; is that correct?

A Well, yes. I can now that I read it. I had no specific recollection of reading it up until the other day.

Q And in December of 1974, after this conversation with me, what was your answer given with respect to

any use of that testimony on your part?

A That testimony was not to be used for any purpose at all, whether investigative or any other purpose at all. I was not supposed to look at it. That was it.

Q After this Xeroxing of materials, what was your next assignment -- generally, what was your next assignment in connection with this particular case?

A After that I believe the witnesses invoked their Fifth Amendment privilege and then I started to draft up requests for immunity, and there were a number of items that had to be dealt with in that, and those were sent off to Washington.

Q Were those your duties during what period?

A Sometime in December of '74, right after those persons had testified or maybe contemporaneously.

Q What was your next assignment in connection with this particular case?

A Well, then when we knew we were going to get the immunity granted and the request granted, sometime, I would say, in February of 1975, thereabouts -- February and March, I started to draft up questions for the grand jury.

Q Was that pursuant to my assignment of you -- to you to draft certain questions for my use in examining

witnesses before the grand jury?

A That's right.

Q And tell us generally what you did in that regard.

A Well, what I did I took the FBI reports, which were generally the most helpful, and the fire marshal's reports -- those two items being the most helpful, and drafted the questions based upon the information that was developed in those.

When I started to get back grand jury testimony from the federal grand jury, I would use that if it was helpful; some was and some wasn't.

Q Did you draft questions for a number of witnesses for my use in presenting the case to the grand jury?

A I did. I drafted a series of questions and I used them for more than one witness. I drafted up a series, I used them for two or three or four witnesses, adapting them for the particular witnesses if there was something specific that he was allegedly involved in.

Q After you finished drafting these questions and before the witnesses would appear before the grand jury, did we have a conversation in which we discussed those questions to which I made certain charges with respect to

what I wanted to do before the grand jury?

A Yes, I drafted them in rough draft and you would go over them and add or subtract, as the case may be, and I would put them into final form.

Q During the course of your duties in drafting these questions for witnesses before the grand jury, did you in any way use Mr. Anzalone's state grand jury testimony-

MR. GOGEL: Objection.

THE COURT: The ground?

MR. GOGEL: It is leading as to the question of taint hearing. I think the question is ill phrased. It certainly suggests the answer that the prosecutor wants. He can make a narrative as to what use he put these materials to and how he used them and not in anaswer to a question that suggests the answer desired.

THE COURT: I will sustain the objection as leading.

Q Mr. Kaufman, can you tell us whether or not you made any use of Mr. Anzalone's state grand jury testimony in your drafting of these questions?

A No, I didn't.

Q And at the time you drafted these questions in February and March of 1975, did you have any specific

recollection of Mr. Anzalone's state grand jury testimony?

MR. GOGEL: Objection. Again the same leading question.

MR. DE PETRIS: I'll rephrase the question, your Honor.

Q At the time you drafted those questions in February and March of 1975, can you tell us whether or not you had any specific recollection of Mr. Anzalone's state grand jury testimony?

A I didn't.

Q At the time you read Mr. Anzalone's state grand jury testimony in September of 1974, did you form any opinion as to whether or not that testimony -- whether or not that testimony was of any value to the investigation?

MR. GOGEL: Objection, again leading.

THE COURT: Only calls for a yes or no answer.

MR. GOGEL: It suggests a yes or no answer.

THE COURT: Well, we don't know what it is. He was asked did he form an opinion about it.

A Yes, I formed an opinion.

Q What was your opinion?

A That it was essentially valueless as most of the state grand jury was.

Q At any time during the course of your duties in connection with this case between September of 1974 and May or June of 1975, when you finished the program, did you at any time discuss with me the contents of Mr. Anzalone's state grand jury testimony?

A No.

Q One final question: Will you tell us whether or not during the course of your assignments in connection with this case you made any use of Mr. Anzalone's state grand jury testimony for any purpose.

MR. GOGEL: Objection. The same grounds previously stated.

MR. DE PETRIS: The question was whether or not, your Honor.

THE COURT: Well, isn't that calling for an ultimate conclusion, in any event? He had contact with it. He has described his contact with it, and thereafter I would think the rest would be up to the Court to determine, not merely on the basis of his say-so.

MR. DE PETRIS: I understand that, your Honor. I think it will be of some value or help to the Court in making your decision for Mr. Kaufman--it's not really, in a sense, a conclusion, and

conclusions are permitted under certain circumstances once the groundwork has been established. In another sense, it is asking for what use he actually made of the state grand testimony. Maybe I could phrase it in another way.

Q Other than your reading of the testimony in September of 1974, other than that, did you in any way use the grand jury minutes of Mr. Anzalone in the course of your assignments in connection with this case?

A No.

MR. DE PETRIS: No further questions, your Honor.

CROSS EXAMINATION

BY MR. GOGEL:

Q Mr. Kaufman, what year of law school were you in at the time you commenced your position with the United States Attorney's office?

A Well, I didn't commence that semester. I only commenced with Mr. DePetris. I was in my third year when I was with Ron.

Q During that time did you study any courses that discussed criminal procedure, transactional or use immunity -- anything that dealt with federal criminal procedure?

A I believe I was taking Federal Criminal Procedure at the time that I began the clinic; as to the other areas, I took a course in Criminal Law. Generally, they may have covered use or transactional immunity, I don't know. I don't remember.

Q Or about the time you started the program were you aware of the term and meaning "transactional or use immunity" in a criminal proceeding or a grand jury proceeding?

A I don't recall if I did know it at that time.

Q Do you recall how you were first acquainted with this investigation as to the incident on Milton Avenue in Staten Island? Was it from a memorandum or a conversation with a United States prosecutor?

A It was in a conversation in which Ron said to me, "There's material on the table." He gave me the basic outline of the case and said, "Read the material." From there I read it.

Q In reading the materials was there any indication to you that Albert Anzalone as of September '74 was a target of that investigation?

A Certainly he was a prime suspect. I don't know what term you're using. Certainly there was an indication from the FBI reports that he was involved.

Q Are you familiar with the term "target of investigation"?

A I am now.

Q As you are now familiar with that term, wasn't he in fact a target of the investigation when you picked up the file in September of '74?

A I would say yes.

Q At that time, from September '74 to the time you left the program, was there any other prosecutor or anyone else from the United States Attorney's office that you discussed this investigation with?

A I can't think of anybody who I would discuss it with.

Q Did you discuss it with any other law students assigned to Mr. DePetris?

A There were none other, except for somebody for about a week.

Q Did you discuss it with anyone from the Civil Rights Division either in New York or Washington or from any office?

A No.

Q Reading the state grand jury testimony of Albert Anzalone, did you prepare any notes or memoranda?

A No.

Q How much material did you read as of September '74 pertaining to this matter?

A There was quite a lot. Pages and pages of grand jury testimony and pages of FBI reports.

Q Did you make any memoranda as to any of those materials that you read?

A I don't remember making anything, any memoranda. I took out some FBI reports that I thought was of value. After I had gone through it and seen most of the stuff was valueless, I just tossed it aside.

I took out what was of value.

Q Did you file any reports with Mr. DePetris or any in the United States Attorney's office?

A No.

Q When was the first time you became aware that part of Albert Anzalone's testimony in the state grand jury was pertinent to transactional immunity?

A Well, I don't know if I-- Well, at the time I read it I must have read over the fact that he had received immunity, because I read the testimony, so I suppose I was aware of it at that time.

Q Did you then raise the question to anyone whether or not that immunized testimony could be in any way used in the federal grand jury proceeding?

A No, I never raised the question.

Q How many times had you read that testimony of Albert Anzalone in the state grand jury?

A Once in September of 1974.

Q There came a time when you did in fact draft questions for use in the federal grand jury; is that correct?

A That's correct.

Q Can you tell me in which manner you were able to completely segregate from your mind and the minds ideas the testimony that Albert Anzalone gave in the state grand jury and the questions you prepared.

A Quite frankly, I don't remember what anybody testified to in the state grand jury at the time I drafted the questions. I didn't read most of what was in the FBI reports. I had to go back at that time because it was such a length of time, and I had worked on other things and there was such a volume of material I hardly read anything about the specifics of who said what about whom.

Q Are you telling me you read absolutely nothing from Albert Anzalone's grand jury minutes?

A I had no recollection of what Mr. Anzalone had said in his grand jury testimony.

Q You had no recollection of what Anzalone

said or what the sources of certain testimony was?

A I don't follow your question.

Q You certainly had in your mind certain materials and information from which you drafted questions for the federal grand jury procedures; is that right?

A That's correct.

Q Did you distinguish the source, that something came from Albert Anzalone, from Roberta Glasser, an FBI report, or anything of that nature?

A I went back to the reports and read them again, that is, the FBI reports, and the fire marshal's reports, and then drafted the questions. That's where the information was coming from.

Q Is it possible that some came from your recollection of Albert Anzalone's testimony?

A Anything is possible. I doubt it, because, as I said, I read all this testimony in September. I had no specific recollection of it. Upon re-reading it the other day before this hearing, I was surpirsed at what I saw in some of the testimony.

Q Well, certainly some of these surprises were necessary for you to pursue your investigation and compilation of all the facts in this case; is that correct?

A Again I don't follow you.

Q Did any part of his testimony give you any lead for furthering your investigation?

A No, it was useless. The testimony was useless.

Q Would not it have been important as to his motive and action on the night of the fire on Milton Avenue?

A It was of little concern to me about the fire, because I was more interested or more-- I was concentrating on other events which involved the shooting out of the windows and the water damage.

Q Were not his actions on those days important to your pursuing your investigation?

A On which days?

Q On any testimony dealing with the night of the alleged occurrences at the home on Milton Avenue, whether the breaking of the windows, the water damage, or the fire.

A On the days of the water damage and the breaking of the windows certainly his actions on those days would be important. In reference to the fire, it was just redrafting one or two very, very general questions on that.

Q Do you have any copy of the questions that you drafted?

A I don't have them.

Q There was a time when you in fact did discuss with Mr. DePetris the fact that you should not use Albert Anzalone's immunized grand jury testimony; is that correct?

A As I testified, the discussion went as follows:

Ron explained to me-- I was surprised he did. I didn't know that you could not use transactional -- the immunized testimony of the state in the federal court. I was surprised when he told me that.

We had the discussion and I wrote that note on the portion of the testimony, and I never looked at it again.

Q Just prior to that conversation with Mr. DePetris, did you start telling him some of the facts of that case?

A There was no point in telling him the facts as I understood it. He reviewed the materials in this case before I even came to work with him.

Q Do you know if any other United States Attorneys in that office reviewed those materials and particularly that immunized grand jury testimony?

A I was told that Manny Moore had the case prior to Ronnie having it.

Q Did you discuss the case with him?

A I don't know Mr. Moore.

Q To your knowledge did he read Albert Anzalone's immunized testimony?

A I think I met Mr. Moore once at a party, and I have never spoken to him except to say hello.

Q You said there came a time when you formed an opinion that Albert Anzalone's testimony in the grand jury was worthless. When did you advise Mr. DePetris of that?

A I don't think I advised Mr. DePetris that it was worthless. What I did, when I was reviewing the material, I read the FBI reports. They were complete -- fairly concise, and then I read through the rest of the material and anything that didn't match up to the Department of the FBI reports, I just discarded.

If it was valueless, I discarded it. I put it on the table and let it go.

Q Do you still have the same feeling that that testimony was worthless?

A Yes.

Q Can you explain to me how you feel it was worthless if you have little or no recollection as to the contents of that grand jury testimony?

A I testified that I just read it on the day prior to this hearing.

Q Are you familiar with the fact that Mr. DePetris filed an affidavit with this court indicating that you advised him that the testimony was worthless?

A I don't recollect that I advised him that the testimony was worthless.

Q Did you in fact ever tell Mr. DePetris on or before March 9, 1976, that the testimony of Albert Anzalone in the state grand jury, immunized testimony, was worthless?

A I don't recollect that I ever told him that.

Q Did you keep any notes or memoranda of any kind -- At any time during your investigation did you prepare any notes? Did you forward any memoranda of any sort, either to Mr. DePetris or anyone in the United States Attorney's office concerning your review of the file?

A You mean a report after I reviewed the file, something like that?

Q At any time.

A No, I never made a report after I reviewed the file.

Q Who did you report to concerning your

investigation of the file?

A Well, actually-- It wasn't an investigation. I just was supposed to familiarize myself with the case. I wasn't attempting to pry out new leads. I was supposed to familiarize myself with the materials and that's what I did.

Q You created files and subfiles and files as to each target or each particular witness, did you not?

A Not as to each witness, but as to the targets, certainly I did, yes.

Q And as to each one of those targets, did you report to anyone as to what you completed in your file, what you compiled, what was contained therein, who you spoke to or what legal research you might have done?

A All I did was Xerox the materials and put them into a file and they spoke for themselves. They had names on them and all the materials that these people had testified to, all the pleas and fire department reports.

Q Did you ever discuss any of the contents of any of those files with anyone?

A Those files with anyone?

Q Who did you discuss it with?

A I discussed them with Ron as far as what was in them. I told him what was in those files.

Q What did you specifically discuss with Mr. DePetris concerning Albert Anzalone?

A At the time I made up the files I brought them to Ron and I said,"These are the files and in these files there is contained the following," and I told him what was contained in the files and that is the grand jury testimony of these individuals, the fire marshal reports, the FBI reports, the police department reports that involved these individuals, and that's when we had that conversation. That's exactly what I told him. The files actually spoke for themselves. They had their names on it and all their testimony or reports in them.

Q You did not discuss any of the contents of any of the documents in the files in specific detail?

A There was no purpose to it because, as I understood it, or it was just my feeling that Ron had a grasp on the case. He had reviewed it prior to my coming on board, and he had a grasp of the case. There was nothing new being developed. I hadn't put anything new in the files.

Q Did you ever discuss any inconsistencies between one witness and another or the action of one witness with respect to the action of Albert Anzalone, as to their discrepancies, whereabouts, action?

A Certainly there were inconsistencies in terms

of, let's say the FBI report of Mr. Madelowe and the answers given to the FBI by other people.

Q Did you discuss specifically items of inconsistencies with Mr. DePetris?

A Yes.

Q Did you discuss inconsistencies with respect to the testimony of Albert Anzalone?

A I d n't think I discussed inconsistencies with respect to the testimony of Albert Anzalone. All I was looking for at the time was the matters of the shooting out of the windows, the water damage, what the inconsistencies were in Mr. Madelone's testimony. As I recall, Mr. Madelone didn't notice anything about the fire.

Basically, what I was using was Mr. Madelone's FBI report.

Q Did you discuss any inconsistencies or inconsistency with his testimony or anyone else's as to Mr. Anzalone?

A I did not discuss his testimony after Ron and I had that conversation.

Q Do you have a copy of the note that you say you prepared and placed upon the immunized testimony of Albert Anzalone advising everyone not to read the document?

A I put it on for Ron not to read it, and

I put -- I wrote it directly on the copy.

MR. DE PETRIS: I may have it, if you want me to look.

Q Can you tell me exactly what you wrote?

A No. It was something like, "Ron, do not read, Anzalone testimony," or something like that, "Anzalone transaction."

MR. GOGEL: I have no further questions.

MR. DE PETRIS: Just one further question.

REDIRECT EXAMINATION

BY MR. DE PETRIS:

Q When you were asked to review the materials, was the purpose of that so you would be familiar with the materials whenever I gave you a particular assignment in connection with the case?

MR. GOGEL: He is asking a leading question. I think it can be rephrased in a different form to get the results that he is looking for.

THE COURT: Is that your advice to him?

MR. DE PETRIS: Shall I rephrase the question? There is no jury present.

Q Mr. Kaufman, when you were asked to review the materials in September of '74, what was the purpose of your reviewing of the materials?

A I was supposed to familiarize myself with the materials so that I would have a grasp on the case, on the facts of the case, and the personalities involved, and then I could work on the case.

Q After you familiarized yourself with the materials, from time to time did I give you particular assignments?

A Yes.

Q Did you perform those particular assignments?

A Yes.

MR. DE PETRIS: I have no further questions, your Honor.

I would like to make one additional statement.

MR. GOGEL: Under oath?

MR. DE PETRIS: However you wish. I know I will be making my statement or testimony the next session.

There is one matter I want to cover here, so I don't forget in case Mr. Gogel wants to address any additional questions to the witness present, that is with respect to my recollection of events of drafting this affidavit of March 9th, 1976, is as follows:

Shortly before I drafted the affidavit I spoke to Mr. Kaufman on the telephone, advised him briefly that a motion had been made, and I was drafting this affidavit, and at that time I asked him if he had any recollection as to whether or not Mr. Anzalone's testimony was of any value, and he advised me that his recollection was -- I think he told me he couldn't recallthe specifics of it -- but that his recollection was that it was essentially worthless.

After that conversation I drafted the affidavit in question.

MR. GOGEL: I will reserve my argument to the conclusion of the hearing when the other witnesses finish. It is quite inconsistent for a gentleman to be able to evaluate the testimony and then say he can't recall what was in the testimony. We will further highlight that point at a later time.

THE COURT: The recollection might have been a little less stale.

MR. GOGEL: That's speculation. I'm going from what the witness testified to from that chair. I find it's quite inconsistent.

MR. DE PETRIS: In my opinion it's not only

consistent, but strengthens it. If a thing is worthless there is no reason to recall any of it. Once anyone read Mr. Anzalone's state grand jury testimony, it became obvious it's essentially worthless.

MR. GOGEL: There must be something to the logic but I don't follow it.

THE COURT: You'd better save your argument.

MR. GOGEL: I understand that we will be continuing September 8th at 3:00 p.m.

THE COURT: Is that the next date?

MR. DE PETRIS: Yes, and at that time we will hopefully conclude. There may be one final witness, I'm not sure, Mr. Paul Bergman. I'll either call him as a witness or have him available on that date in case the defense wants to call him, and I'll have a statement or testimony to give myself and certain documentary evidence to introduce as to the sorce of the various evidence in the trial.

THE COURT: Perhaps they can make up their minds, because he is now a practicing lawyer. He is not on the public payroll any more.

MR. GOGEL: We'll make that determination prior to September 8th.

THE COURT: All right.

MR. DE PETRIS: Why don't we leave it this way: Mr. Gogel or Mr. Agulnick will advise me if there is anyone else they want to appear or call as witnesses, and if not, I will appear myself on September 8th and make my statement or testimony in whatever form we do it, and introduce the documentary evidence.

MR. GOGEL: Fine.

THE COURT: That takes care of matters from your standpoint now.

MR. GOGEL: For the taint hearing.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-against- 75 CR 751

ALBERT ANZALONE,

Defendant.

----------x

United States Courthouse
Brooklyn, New York

September 15, 1976
3:00 o'clock P.M.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

HENRY LE GENDRE
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: RONALD DE PETRIS, ESQ.
Assistant U.S. Attorney

WILLIAM GOGEL, ESQ.
Attorney for Defendant

HLG/tk

THE CLERK: Criminal hearing, United States of America versus Albert Anzalone.

MR. GOGEL: Mr. Agulnick is on a rather lengthy trial in Queens County, one of the Special Prosecutor cases that has been going on for about two weeks and it ought to last another three weeks. I'm substituting for him. We were supposed to be substituted by Michael Washor, 16 Court Street, whose office informed me that he's on a lengthy trial in Manhattan. It would be my understanding that he wante. to substitute for us for the purpose of the taint hea ing.

MR. DEPETRIS: My understanding with the last conversation I had with Mr. Washor, he did not intend to come in for the balance of the taint hearing, only to come in subject to the Court's approval, at sentencing and for appeal.

MR. GOGEL: The message my office received is that we continue on the taint hearing and he would come in for the purpose of the sentence. I would like to make an application and I'll proceed.

I would like to ask that we be relieved in his favor from the prosecution of that hearing. If that motion is denied, I'm ready to proceed with the balance of the taint hearing on behalf of Mr. Agulnick.

THE COURT: It seems to me that postponing the

matter would delay sentence. You are the last witness, I believe.

MR. DEPETRIS: Plus Mr. Paul Bergman, who is available on telephone call to come over if Mr. Gogel wants him.

MR. GOGEL: If we proceed, I would ask for time to call him. He's in the U.S. Attorney's office in Manhattan.

THE COURT: You want to call him now?

I would prefer to proceed. I do not believe Mr. Washor is really in a position to pick up this matter, this aspect of it.

MR. DEPETRIS: I don't see how any attorney can come in and do justice on the balance of this hearing.

I'm ready to proceed. If I may have a moment to call Mr. Bergman.

MR. GOGEL: The question is, since Mr. Washor is engaged and Mr. Agulnick is also engaged, do you authorize me to proceed on your behalf in this hearing?

THE DEFENDANT: Yes.

THE COURT: All right, make your call and I'll -- you can relax for a moment, Mr. Washor.

MR. WASHOR: I suppose I owe this Court an apology, not appearing on the last occasion. There was a misunderstanding and I suppose you realize that it

would not be deliberate, I have no reason to make it difficult for the Court or Mr. Depetris. I have been retained to represent the defendant for appellant purposes, as a result of which originally it was my feeling that I might be of some contribution at the hearing that is on. By analysis I felt better to let the other attorneys complete it.

I'm on trial now and I tried to accommodate co-counsel. I have left a message I couldn't make it. Like all things turned around our matter didn't terminate, I had the remainder of the afternoon off. I owe a courtesy to Mr. Gogel. I think it's best only from the standpoint that the hearing be complete if you will permit it, however, the following Friday, which I understand is the date scheduled for sentence I would ask that his office be relieved and I be permitted to appear.

THE COURT: Mr. Agulnick --

MR.WASHOR: And under no circumstances I won't be late, it will save them a little bit of trouble and be able to proceed expeditiously.

MR. GOGEL: Can I confer with Mr. Washor?

THE COURT: Prior to your coming in, Mr. Gogel had faithfully brought to the Court's attention the fact that there was some indication that you desired to be

here for the last part of this hearing, this taint hearing and perhaps take part in it or conduct it, but failing approval by the Court he was prepared to go forward for Mr. Agulnick. I ruled that I thought he should go forward without you. It did not seem your coming in this late date you would really be able to contribute very much.

MR. WASHOR: I might make it more complicated than necessary.

THE COURT: This is not any reference to your qualifications or anything else, just the plain simple fact that it's been going on for quite a while and a further postponement would postpone sentence date and keep this thing dragging along; have Mr. Gogel substituted since he had been through the whole mill from beginning to end, I asked him to go out and make another call, get another witness started over here.

If you wish to confer for a moment, go right ahead.

MR. GOGEL: Mr. Washor and I have conferred about my conversation and Mr. Washor's conversation with Mr. Paul Bergman, we have come to the same conclusion that we will not call him as a witness in this hearing for various reasons. We both concur.

THE COURT: You want to notify him?

MR. GOGEL: I have so notified him. He's not coming in; the decision is concurred.

THE COURT: Who is the next witness?

MR. DEPETRIS: I would be the last witness.

I think I could go ahead for the balance of the hearing. I don't know if the defendant wishes me to make the statements that I have to make under oath, which I am prepared to do, or simply make a statement, representation as an Assistant U.S. Attorney.

THE COURT: I'll let Mr. Gogel express his preference.

MR. GOGEL: May we have Mr. Depetris under oath?

THE COURT: You want him sworn and on the stand?

MR. GOGEL: Yes.

(At this point, Mr. Depetris was sworn by the Clerk of the Court.)

MR. DEPETRIS: I would make a statement on behalf of the Government from down here at the counsel table rather than the witness stand. It would be easier with the documents, and when it comes time to be questioned by defense counsel, I will take the witness stand, if that's satisfactory.

Your Honor already has before the Court an affidavit of mine dated March 9th of 1976, and I would

at this time adopt the statements made in that affidavit as part of my testimony.

Additionally, there is also case law, various cases cited in that affidavit. There has been one additional case that came down from the SEcond Circuit since the time of that --

THE COURT: I have that Kerzer.

MR. DEPETRIS: I am familiar with the Kerzer case.

THE COURT: This is another one, but I didn't think it was relevant to this case. There is an additional one.

MR. DEPETRIS: There is an additional case, USA versus Nicholas Bianco, decided April 8, 1976, slip opinion 3099 at 3111 to 3117, it's in the discussion of a similar issue. I don't think it really adds anything to the case load that is contained in the affidavit, but it is an additional case discussing the subject by the Second Circuit. I thought I would bring it to your Honor's attention.

I would then now propose, as I indicated in the affidavit, establish the sources of the evidence. I was the Assistant U.S. Attorney who presented this case to the grand jury and at trial, as your Honor is aware, so, therefore, I would like to put on the record

the sources of the evidence which I developed before the grand jury and at trial.

I would propose to do it with two separate methods, one the witnesses who in some sense testimony tended to implicate Mr. Anzalone, and second, category of witnesses who provided background information or testimony against other defendants, but who did not implicate Mr. Anzalone.

I will take the first category of witnesses, whose evidence could have implicated Mr. Anzalone in the crimes charged in the indictment.

The first such witness would be Mr. Jerald Mattalon, and the source of that witness, my source of that witness was an FBI report of an interview of Mr. Anzalone Maddalone of March 5, 1974. It was marked as 3500 material at trial, 3500-4-B. I would propose to have it now as the next exhibit in this hearing, which would be according to my records exhibit 6.

MR. GOGEL: Your Honor, at this time I believe the method of testimony being brought forth by Mr. Depetris is way beyond the scope of the purpose of the taint hearing, and I would ask that the matter be presented by Mr. Depetris dealing with the State immunized grand jury, its application, its origin, its use to research into it and in various ways in which it

affected or did not affect the presentation before the Federal grand jury that led to this indictment. I think to go into all of the sources of the testimony of other witnesses is superfluous.

THE COURT: that isn't quite so because in this recent case of United States against Kerzer, decided April 14, 1976, slip opinion 3219, the Court quoting from Murphy against the Waterfront Commission pointed out that once a defendant demonstrates that he has testified under a State grant of immunity to matters related to the Federal prosecution, the Federal authorities have the burden of showing that their evidence is not tainted by establishing that there had been independent legitimate source for the disputed evidence.

The Supreme Court went on to say, "This burden of proof, which we reaffirm as appropriate is not appropriate. Rather, it puts on the prosecution the duty to prove that the evidence it proposes to use" -- or in this case did use -- "is derived from a legitimate source wholly independent of the compelled testimony."

Now, of course, Mr. Depetris has a problem here in that he's both witness and examiner, and I know of no more practical way for him to proceed than to

outline, as he has begun to do, what would be his answers if someone were asking him question by question what is it the Government claims are the sources of the evidence independent of the compelled testimony.

MR. DEPETRIS: That's exactly what the purpose —

MR. GOGEL: Under those circumstances, I'll withdraw the objection.

THE COURT: It might be somewhat time-consuming, but rather than go through this only to find on some appeal that it has to come back for more, something more here, it is something that I would wish to avoid.

MR. GOGEL: I understand.

MR. DEPETRIS: Perhaps the defendant is prepared to stipulate that there was an independent source.

MR. GOGEL: Absolutely not.

THE COURT: I doubt whether Mr. Gogel will go for that.

MR. DEPETRIS: The next exhibit number would be exhibit 6.

THE COURT: we'll take your word for it, but I wonder what happened to the list.

MR. GOGEL: The last was 5-A.

THE CLERK: Seven page document dated March 5, 1975, Government taint hearing exhibit 6.

MR. DEPETRIS. The next witness --

THE COURT: What was the first one we got before we got diverted?

MR. DEPETRIS: Jerald Mattalon was the witness, and the document is marked as exhibit 6, was the source of my calling Mr. Mattalon as a witness before the grand jury.

THE COURT: It's an FBI report of an interview with Mr. Mattalon dated March 5, 1974, is the date of the statement.

Was that by Agent Safadel?

MR. DEPETRIS: Who testified at one of the earlier hearings.

THE COURT: Right.

MR. DEPETRIS: A second witness implicating Mr. Anzalone was Nancy King. My source of this witness was an oral statement by Mr. Mattalon to me on November 11, 1974, as a result of which Agent Savadel -- which was made to me -- and Agent Savadel as a result of which Agent Savadel interviewed Nancy King on November 21, 1974, and I would ask that the report of the interview on November 21st be marked as Government's exhibit 7 in this hearing. It was marked as 3500-12-A at the trial.

THE CLERK: Two page document dated

November 22, 1974, received in evidence as Government taint hearing exhibit 7.

MR. DEPETRIS: The date of the interview was dated November 21st, it was transcribed on November 22nd.

The third witness implicating Mr. Anzalone was Anthony Totora. In a sense, there were three sources of my calling Mr. Totora as a witness.

I.. the exhibit which had been marked as Government's exhibit 6 in this hearing, Mr. Mattalon referred to Mr. Totora as possibly having some connection with the solicitation of money.

A second source was an FBI report of an interview of Mr. Arnold Frier, an interview on February 9, 1974, which I would ask be marked as Government's exhibit 8.

THE COURT: That's 8?

MR. DEPETRIS: Eight. In the interview report Mr. Frier referred to having been solicited by Mr. Totora.

THE COURT: What was the date of that FBI report?

MR. DEPETRIS: February 9, 1974.

THE CLERK: Three page document dated February 9, 1974, received in evidence as Government taint hearing exhibit 8.

MR. DEPETRIS: And thirdly, I would ask to be marked as Government's exhibit 9 in evidence an FBI

report of interview of Fire Marshall George Felton on April 7, 1974; that report is a conversation with Mr. Barbieri, who had indicated that Mr. Totora had an involvement in the solicitation of money, and I would ask that be marked as Government's exhibit 9. It was 3500-8-B at the trial.

THE CLERK: Two page document dated April 2, 1974, received in evidence as Governmert taint hearing exhibit 9.

MR. DEPETRIS: As a result of reading those three exhibits that I called Mr. Totora as a witness before the grand jury and his testimony subsequently forth.

Leo Glazer is the next witness, and I would ask that to be marked as Government's exhibit 10 in evidence, the State grand jury testimony of Mr. Leo Glazer on May 2, 1972, which was 3500-6 at the trial and was one source of my calling Mr. Leo Glazer, who implicated Mr. Anzalone in the solicitation of money.

THE CLERK: Document dated May 2, 1972, received in evidence as Government's taint hearing exhibit 10.

MR. DEPETRIS: And I would offer as Government's exhibit 11 in evidence a document marked 3500-6-A at

the trial, an FBI report of an interview with Leo Glazer on December 3, 1973, which was also a source of my calling Mr. Leo Glazer as a witness in these proceedings.

THE CLERK: Four page document dated December 3, 1973 received in evidence as Government's taint hearing exhibit number 11.

MR. DEPETRIS: Next witness in question was Mr. Robert Glazer, and I have four documents to be marked as exhibits 12 through 15 as my sources of having called Robert Glazer as a witness, first the State grand jury testimony of Robert Glazer on June 16, 1972, which was marked as 3500-9 at the trial; exhibit 13 would be State grand jury testimony of Mr. Robert Glazer on September 22, 1972, which was marked 3500-9-A at the trial; exhibit 14 is a fire marshall report of an interview of Robert Glazer marked 3500-9-D at the trial, and exhibit 15 is an FBI report of an interview of Robert Glazer on December 8, 1973, which is 3500-9-B at the trial, and these exhibits were the source of my calling Mr. Robert Glzer as a witness.

THE CLERK: Document dated June 16, 1972 received in evidence as Government's taint hearing exhibit 12.

Document dated September 22, 1972 received in evidence as Government's taint hearing exhibit 13.

Two page document undated, received in evidence as Government's taint hearing exhibit 14.

Three page document dated 12/18/73 received in evidence as Government's taint hearing exhibit 15.

MR. DEPETRIS: Next witness in question is Detective Richard Corbet, who through his testimony of his discovery of those two cans may have been evidence implicating Mr. Anzalone. I've four documents constituted in my sources of having called him as a wit.ess in these proceedings:

The first one has already been marked as exhibit 4, State grand jury testimony of Detective Corbet on July 14, 1972, which was exhibit 3500-10-A at the trial.

Second exhibit is an FBI report of an interview of Mr. Corbet dated April 24, 1972, which was 3500-10-F at the trial, and I would ask it be marked as Government's exhibit 16 at this hearing.

THE CLERK: One page document received in evidence as Government's taint hearing exhibit 16.

MR. DEPETRIS: Third document is an FBI report of Detective Corbet, dated December 10, 1973, which was exhibit 3500-10-G at the trial, and I would ask it

be marked as the next Government's exhibit in this hearing.

THE CLERK: Two page document dated December 10, 1973, received in evidence as Government taint hearing exhibit 17.

MR. DEPETRIS: Finally, FBI interview of Detective Corbett, 3500-10-H at the trial, and I would offer it as the next Government's exhibit.

THE CLERK: Document dated July 22, 1972, received in evidence as Government taint hearing exhibit 18.

THE COURT: 75?

THE CLERK: 75, yes.

(continued next page)

MR. DEPETRIS: The next witness in question was Anthony Romero, who testified concerning the interview of Mr. Anzalone at the trial, who gave his opinion as to the cause of the fire at the trial, which evidence was evidence against the defendant Anzalone; and I have four documents which were sources of evidence of my calling Mr. Romero, which already has been marked as exhibit 5-A in the hearing, fire marshall report of interview with Mr. Anzalone; and 3500-11-E at the trial.

Second document was already marked as exhibit 5 in this hearing, was exhibit 3500-11-A at the trial and it's a State grand jury testimony of Mr. Romero on July 14, 1972.

The third document which I will ask not to be marked is a state grand jury testimony of Mr. Romero on May 2, 1972, and it was exhibit 3500-11 at the trial.

THE CLERK: Four-page document dated May 2, 1972 received in evidence as Government's exhibit taint hearing exhibit 19.

MR.DEPETRIS: And the last document as to Mr. Romero, an FBI report interview of Mr. Romero on December 13, 1973, which was 3500-11-B at the trial, and I ask that it be marked as the next Government's

exhibit in evidence at this hearing.

THE CLERK: Two-page document dated December 13, 1973, received in evidence as Government's taint hearing exhibit 20.

MR. DEPETRIS: And finally in this category we have the tape recording of the anonymous call reporting the fire, which was introduced in evidence at the trial, and my sources for using that -- for coming across with that piece of evidence was a transcript of the tape prepared by Fire Marshall Felton, dated April 26, 1972, which I will ask to be marked as the next Government exhibit in evidence at this hearing.

If your Honor recalls this transcript was not the transcript that was utilized at the trial, a new one was prepared by the FBI because this transcript in several respects was not verbatim transcript of the actual tape recording.

THE CLERK: A three-page document dated April 20, 1972, received in evidence as Government's taint exhibit 21.

MR. DEPETRIS: Your Honor, that completes the first category, the witnesses who you might say tended to implicate Mr. Anzalone.

Second category of witnesses consists of

witnesses in my view that tend not to implicate Mr. Anzalone and they were Carl Schlechtinger, Alberto Charles, Durrell Charles, John Golucci and George Felton. I am prepared to establish now, even though they didn't implicate Mr. Anzalone, my source for them --

MR. GOGEL: We'll waive the testimony containing the source of their testimony. I conferred with Mr. Washor.

MR. WASHOR: It's irrelevant.

THE COURT: I'm inclined to agree with that unless the Government feels --

MR. DEPETRIS: I would agree with that. Under the circumstances that the agreement includes the fact that the State grand jury testimony of -- there was an independent source for these witnesses, and they were not derived from the State grand jury testimony of Mr. Anzalone, and I would so construe from statements.

THE COURT: I am not sure. They say they regard this as irrelevant to the issues raised here, so it probably implied that it would not be a basis for finding a taint or not finding one.

MR. DEPETRIS: It probably would not, but out of an abundance of caution, unless there is an agreement as the case law does say we should establish

the independent source for all the Government's evidence.

MR. WASHOR: As to the defendant, isn't that what the real issue is?

MR. DEPETRIS: It may be, but I would propose to establish my source unless we can agree, since apparently the defendant feels it's irrelevant that there was an independent source for these witnesses, or in the alternative agree to waive any question as to these witnesses and taint before this Court, and on appeal.

MR. WASHOR: We have no standing if they don't inculpate the accused, how can we raise the rights of those who he does inculpate?

MR. DEPETRIS: Of Mr. Anzalone as to claiming any taint based on these witnesses.

MR. WASHOR: These witnesses did not inculpate--

MR. DEPETRIS: But the jury heard their testimony.

MR. WASHOR: He was not convicted of the conspiracy charge, so we are dealing with two substantive charges, perjury and the misdemeanor, statutory civil rights violation, and that would have to be restricted on those witnesses that in fact implicated him in the commission of those crimes. You may have thousands of independent sources for other

witnesses. There is no position to be taken by the defendant there.

MR. DEPETRIS: Your Honor and I would have to proceed and establish the independent source. It could provide a grounds for remand on appeal. I don't quite understand the defendant's position if they agree it's irrelevant, why don't they waive the matter; if they are not prepared to waive the matter, it would indicate that they may consider raising it on appeal. I would go ahead and establish the source.

MR. WASHOR: I think Mr. Depetris should recognize everything that is being said here. We would be a bit hard-pressed to raise that issue having made it. We don't want to consent at a taint hearing. We can agree to that which has no pertinency for this Court decision -- let's assume the Government had 20,000 independent sources while the witnesses that do not implicate the defendant Anzalone, how could that be taken into consideration favorably or unfavorably, whether there had been a taint as to the accused Anzalone?

THE COURT: Let me say that Ithiink Mr. Depetris probably arises from the fact, as I pointed out a short while ago, on the basis of the Cursa case and the quotation from the Murphy against the Waterfront

Commission case, that the Government has the burden of proving that the evidence if used at trial against the defendant, one of whom was Anzalone, was not tainted by the fact that it derived from grand jury testimony which he gave under immunity.

As I see it, if you are prepared to concede that the testimony of these other witnesses which did not implicate Anzalone was not derived from testimony he gave before the State grand jury, then we would be on safer grounds; if you're not prepared to concede that then I fear I must let the Government place it in the record, even though I am inclined to believe with you that it has no relevance to him in particular, but it must be borne in mind that the case was brought against four defendants, of which he was one, and it cannot be said, of course, for certainty, that even though the jury was instructed that each defendant must be considered separately as if he alone were on trial, that they did not consider all of the evidence in the case as against each defendant; you see.

MR. DEPETRIS: Some of this evidence, Mr. Charles and Mr. Schlectinger was evidence against Mr. Anzalone, it established the fact of certain acts of vandalism. It didn't implicate him, but it was --

THE COURT: I think it's very difficult, as I

say, to separate this from the other unless counsel on behalf of Mr. Anzalone are prepared to agree or concede that the Government's burden of proof does not have to include evidence which did not directly implicate Anzalone.

MR. WASHOR: Can we make one inquiry of Mr. Depetris? Did you use any grand jury testimony as you list it hear, regarding Glazer -- the two Glazers, Corbett, Romero?

MR. DEPETRIS: Schlectinger and Mrs. Charles and Mr. Charles all testified before the State grand jury prior to Mr. Anzalone's testimony, but they all gave testimony before the State grand jury and of course, that State grand jury testimony was one source of my calling them as a witness.

MR. WASHOR: Can't concede on one hand --

THE COURT: I think perhaps we better go ahead and take it for what it's worth.

MR. DEPETRIS: I would agree with the defendant's position that this is irrelevant legally because the evidence didn't implicate Mr. Anzalone. I can't see any Court of Appeals reversing.

THE COURT: It's always unsafe to predict what any Court of Appeals will do.

MR. DEPETRIS: I would prefer to go ahead and

put the evidence in the record.

THE COURT: Do just that, because as I pointed out, this case was tried as a whole and it is not perhaps easy to segregate evidence against one defendant from that used against another defendant, and it seems to me the language of the Curser case is perceptible of a burden that extends to all the evidence that the Government used to convict any one of the defendants, including the one who's challenging the use of evidence as against him because of his immunity status.

MR. DEPETRIS: Perhaps I could speed it up. Most of these exhibits were marked as 3500, perhaps we could deem those marked.

MR. WASHOR: No objection.

MR. DEPETRIS: 3500-1; 1-A; 1-B; 1-C; 1-G; 1-H were all sources of my having called Carl Schlictinger.

THE COURT: I wonder if those designations are sufficient to identify them from a standpoint of the marking of exhibits at the trial. There were several pages of 3500 material.

MR. DEPETRIS: I could identify each exhibit and perhaps we could --

THE COURT: What I'm trying to say is, for

purposes of this hearing we should continue -- these are really hearing exhibits and start a new series, while I know you have skipped to some extent, I haven't thought of it before that. As I recall it, the previous ones that have been referred to but have not been numbered today were numbered previously, which I have shorthandedly called Government's exhibit 4, Government's exhibit 4-A and 5, those are the only ones I recall.

MR. DEPETRIS: All the exhibits have been marked as separate exhibit numbers before the Court.

THE COURT: I'm not clear, then. We went up to 21. Are you going to start marking them 22, 23?

MR. DEPETRIS: May I confer with defense counsel?

Your Honor, I think there was a discussion before between counsel as to whether we we trying to resolve by agreement. Let me state what I understand now is being prepared to be conceded, stipulated to or waived or whatever words you want to put on it, and that is Schlectlinger, Mr. and Mrs. Charles, John Golucci and Felton, those five witnesses were not derived by the State grand jury testimony of Mr. Anzalone on April 18, 1973, for which he received transactual immunity.

MR. WASHOR: That's stipulated. Mr. Anzalone

testified subsequent to those five witnesses -- that is not to indicate that that limits the issues of this hearing.

THE COURT: So it would follow in exigency that information could not -- which is undated, his grand jury testimony could not be attirbuted to it.

MR. DEPETRIS: Three of the witnesses fit into that category, two of the witnesses did not testify before the State grand jury.

MR. WASHOR: That solves that problem.

MR. DEPETRIS: So I assume the stipulation stands as to all five. Are we clear as to these five witnesses, is conceded that their testimony did not derive from the State grand jury testimony of Albert Anzalone?

MR. GOGEL: The record should reflect that Mr. Washor does have standing.

THE COURT: I have accepted Mr. Washor's appearance in this case on the basis of his earlier statement. We'll consider him as having standing, to voice the objection and to make the agreement that was made.

MR. DEPETRIS: I have no objection to that, your Honor.

THE COURT: Now, where do we go from there? Let me have those names again of the five witnesses.

MR. DEPETRIS: Carl Schlectinger, Alberto Charles; Durrell Charles, John Golucci and George Felton.

THE COURT: What's next?

MR. DEPETRIS: Your Honor, I believe I have now established the source of the evidence which was used at the trial, either by way of documentary evidence or the stipulation, and unless there is any other particular evidence -- any particular piece of evidence which defendants claim was tainted, I'll be glad to answer any questions they might have as to any particular piece of evidence.

That would conclude my proof as to the independent sources of the evidence. I do have a couple of additional matters.

THE COURT: Okay.

MR. DEPETRIS: I would refer your Honor first to paragraph -- does your Honor have the affidavit?

THE COURT: I have it.

MR. WASHOR: If it's in evidence and it's before the Court as a moving --

THE COURT: It's not in evidence, it's in the file of the case.

MR. DEPETRIS: It is in evidence, I adopted it at the beginning of my --

THE COURT: Was it given a number?

MR. DEPETRIS: I adopted the statement. I was going to call your Honor's attention to the point of information in a particular paragraph, and I was going to offer a particular statement in regard to it. Does your Honor wish to have me offer it as an exhibit? It can be deemed marked, but I would call your attention to --

THE COURT: If you want to be sure about it, why don't we mark a copy of it as hearing exhibit 22, which, of course, will include any attachments as well.

MR. DEPETRIS: None of the attachments relate to this issue.

THE COURT: Why don't you detach them?

MR. DEPETRIS: For the time being, why not mark the affidavit as an exhibit, but only understood that it only refers to the State grand jury testimony of Mr. Anzalone be in evidence.

THE COURT: You mean only from page 8 on?

MR. GOGEL: Designate it by paragraph.

MR. DEPETRIS: Starting with paragraph 18 to the end; paragraph 33.

THE COURT: All right.

MR. DEPETRIS: Through paragraph 33.

THE CLERK: Sixteen page affidavit received in

evidence as Government taint hearing 22.

MR. DEPETRIS: I would particularly call your Honor's attention now to paragraph 24 and at the outset I refer to paragraph 20 and 22, and that was the memorandum of Assistant U.S. Attorney Emmanuel Moore and a student assistant who was to work with Assistant U.S. Attorney Paul Bergman.

I've indicated in the affidavit that they prepared memoranda concerning this case, in which there were brief references to Mr. Anzalone's State grand jury testimony, and as I indicated in the affidavit, I did not read the State grand jury testimony. However, I did make brief review of these two memoranda at the outset of my involvement in the case, and, therefore, I have these available.

MR. WASHOR: What are these?

MR. DEPETRIS: These are the two memoranda with brief references to Mr. Anzalone's state grand jury testimony.

THE COURT: Those are the ones referred to?

MR. DEPETRIS: In paragraph 20 and 22 in the affidavit.

As I've already indicated, your Honor, these brief references to Mr. Anzalone's State grand jury testimony were not sources of any lead to the evidence

in the case, and I in no way used them in any respect with respect to this case, not for leads; not for making any decisions or any other such action.

As a matter of fact, by the time I got back to concentrating on the case, if you recall Mr. Kaufman's testimony, there was an intervening of time, we were working on other cases. By the time I got back to it and started working on it I had no recollection of what was in those two memorandum concerning Mr. Anzalone's State grand jury testimony other than the fact that I was aware he had denied any involvement, but I was aware of that from the fire marshall and police detective interviews of Mr. Anzalone, which were not in any way tainted.

THE COURT: Now, does the testimony of Scott cover the civil rights participation?

MR. DEPETRIS: Yes, your Honor. It would be my view that none of the involvement of any of the people, civil rights division or Mr. Moore or Mr. Bergman prior to myself becoming involved in the case is really relevant to this hearing. I was the assistant who prepared the case for the grand jury and who prepared the evidence at trial.

However, out of an abundance of caution I have gone at this hearing into some of these prior matters,

but none of these prior people played any role in the evidence that was presented to the grand jury or at trial. I also have with me -- I refer in that paragraph four to the extensive notes that I made in my initial review of the various materials, FBI reports; the grand jury, State grand jury testimony other than Mr. Anzalone's; fire marshall's report; police department reports, as I indicated in the affidavit.

I made notes of this, extensive notes, and it was that which I went back to at the time I started to present the case to the grand jury and it was these materials that I used in recollecting what the evidence -- existed at the time was, et cetera, in which I used to develop the case before the grand jury.

I could represent to the Court that there is nothing in these notes concerning Mr. Anzalone's State grand jury testimony because I did not read that testimony. In fact, on one page in the note there is a little note to myself not to read the testimony of Mr. Anzalone before the State grand jury until the effect of the Youth Immunity -- the Federal charge was considered, then I did make that consideration and looked at some of these cases and determined not to read it. I'm prepared, if defense counsel wish to

present these notes to the Court for in camera use or they could accept my representation that there is nothing in these notes relating to Mr. Anzalone's State grand jury testimony.

However, if counsel and the Court want to proceed in that manner we have these three exhibits now; the two memos which I suppose I should put into evidence. These are the two memoranda. It was Mr. Gogel's thought I was providing it to him as his copy, but this is the copy I was going to mark as an exhibit, and some of the pages there is an X on the margin that Mr. Gogel placed there.

I want to state for the record it's not part of the exhibit. I would ask that they be marked at least for identification.

THE COURT: We'll have it marked in evidence.

THE CLERK: Memoranda dated September 5, 1973 received in evidence as Government's taint hearing exhibit 23.

Document dated July 3, 1974, received in evidence as Government taint hearing exhibit 24.

THE COURT: Is that Kaufman's memo?

MR. DEPETRIS: The student assistant known as Barry Ross, who was assigned to work with Mr. Bergman, that's his memorandum to Mr. Bergman.

Mr. Bergman in turn recommended to the U.S. Attorney that the grand jury investigation be conducted, he likewise did not make any use of Mr. Anzalone's testimony. He's the witness who was available today and who Mr. Gogel and Mr. Washor was on telephone notice and decided not to call.

The U.S. Attorney then assigned the case to me for an independent review. I made an independent review and recommended grand jury investigation and it proceeded from there.

THE COURT: There is one thing that I would like to inquire, I am not sure whether it was gone into at the time that Scott was here. My inquiry is not directed to him.

At the time the matter was referred to the Civil Rights Division, was that for the purpose of getting authority to institute an investigation?

MR. DEPETRIS: No, your Honor. Mr. Moore -- as reading Mr. Moore's memo, Mr. Moore reviewed the case essentially and determined that there would be no grand jury session. The matter was referred to the Civil Rights Division as to whether or not they wished any further action in the case. I think Mr. Moore's recommendation was that there be no grand jury investigation.

Mr. Moore, who was the U.S. Attorney at that time decided to forward his report to the Civil Rights Division, omitting the recommendation that there be no grand jury investigation and let the Civil Rights Division decide whether there should be any further proceeding.

The Civil Rights Division made that review and requested the FBI to conduct a further investigation which was the letter which was marked as exhibit 1 in evidence in this hearing.

THE COURT: Now it's in evidence.

MR. DEPETRIS: Then it picks up from there with the FBI doing their investigation. It shows that they developed an investigation. The key witness being Mr. Mattaion. From there came Mr. Bergman and my review of the case, and my recommendation of the grand jury investigation. At that point we sought authority from the Civil Rights Division to present the case to the grand jury. They gave us the authority.

Civil rights is one of the few areas where you have to get the authorization of Washington to proceed under the U.S. Attorney guidelines. We got the authority and proceeded with the grand jury investigation.

THE COURT: One further investigation. Was

Mr. Anzalone's state grand jury testimony transcribed?

MR. DEPETRIS: Yes, it was.

THE COURT: And is a copy in evidence?

MR. DEPETRIS: Yes, it is.

THE COURT: Is it one of the earlier exhibits?

MR. DEPETRIS: Exhibit 2.

I would ask that these notes that I referred to be marked for identification.

MR. WASHOR: Can you deem it marked?

MR. DEPETRIS: Mark it for identification, which would be exhibit 25 for identification.

THE COURT: These are your notes?

MR. DEPETRIS: Yes, your Honor.

THE CLERK: Brown file and contents marked Government tain hearing exhibit 25 for identification.

MR. DEPETRIS: And they are available for in camera inspection if the defendant so desires. I think that covers everything I intended to cover. I had some conclusory remarks which I could save until later or make now, as your Honor wishes.

THE COURT: If it's not testimonial in nature, I suspect counsel, if they wish, may cross-examine now.

(At this point, Mr. Depetris took a seat in the witness stand.)

CROSS-EXAMINATION

BY MR. GOGEL:

Q Mr. Depetris, describe the date and manner in which your office or Civil Rights division obtained access to the State grand jury testimony of Albert Anzalone.

A May I refer to the affidavit?

20 of the affidavit --

MR. GOGEL: May the witness be permitted to give an answer?

THE COURT: Answer the question.

A I was not the Assistant U.S. Attorney assigned to the case at that time, so I can only provide what my understanding as it appears in the affidavit, and that is in June of 1973 a request was made to Mr. Brastead, the then District Attorney of Staten Island, for the grand jury minutes, and that request was complied with.

Q Was there any judicial proceeding of any kind or nature which authorized the release of those grand jury minutes to the U.S. Attorney's office other than a letter or communication to Mr. Brastead?

A I don't know what steps Mr. Brastead took to release the grand jury minutes.

Q Did your office or your predecessor, or the U.S. Attorney's office or the Civil Rights Division make any application to any court for the release of those state grand jury minutes?

A No. As I said, the request was made to Mr. Brastead and presumably he followed whatever procedures were required.

Q Do you have any personal knowledge of the manner in which Mr. Brastead released the grand jury minutes, whether it was by his own determination; whether it was by judicial proceeding or any other method?

A No, I don't.

Q Would there be any superior or predecessor of yours who would have that knowledge?

A I don't know. I was not the assistant at that time, Mr. Moore, Emmanuel Moore, was the Assistant U.S. Attorney at the time, and he may or may not know.

Q Does the criminal division of the U.S. Attorney's office in the Eastern District operate as a one-unit, or is each individual U.S. Assistant U.S. Attorney, research assistant or summer intern, an entity unto himself?

A Am I allowed to interpose an objection acting as the attorney?

THE COURT: It is a rather broad question, Mr. Gogel. What are you really aiming at, no use in making speeches here.

Q No summations during the questioning.

Mr. Depetris, several members of the U.S.

Attorney's office handled this matter?

A Yes.

Q So your predecessor, your assistant, some interns; correct?

A I was the only Assistant District Attorney who handled the case from the point in time that it was assigned to me, and I had a student assistant who assisted me.

Q There were U.S. Attorneys who handled it prior to your being assigned the case?

A That is correct.

Q Were you working each as a unit passing forward your files, memoranda, concerning the research? Was each U.S. Attorney who handled the case or was each U.S. Attorney acting as a separate entity?

A I don't know what it means.

THE COURT: I think the point of it all is, when you got the case there had been some sort of accumulated file which represented the work of several others before you.

MR. DEPETRIS: That's correct. I have the file available. As I indicated, I did not discuss the case with Mr. Moore. I don't even think he was still with the office at the time it was assigned to me. Mr. Bergman was with the office at the time it was

assigned to me, but he had only made a cursory review of the matter but he had not read all the material, so I did not discuss the case with him. I did have the report which was marked as an exhibit, which had been prepared by the student assistant to Mr. Bergman, and I really didn't use that at all, although I did review it initially.

Q Would it be a correct statement of fact, then, that each person or persons who handled this matter was handling it for determination at some point for either prosecuting -- declining to prosecute or can forward a prosecution, that being the goal of each person who handled it?

A Sounds like a fair statement. I can't speak of what was the state of mind of the other assistants. Mr. Moore had it for prosecution surely; Mr. Bergman had it for a brief review at his recommendation to the U.S. Attorney.

I don't know if that answers your question.

Q Do you know who Seth Kaufman is?

A Yes.

Q Who was he?

A Student assistant who was assigned to work with me.

Q Do you know of your own knowledge whether he had read the immunized State grand jury testimony of

Robert Anzalone?

A Yes.

Q Was that before he had any conversations with you concerning questions that might be asked in a Federal grand jury?

A Repeat that question.

Q Did Mr. Kaufman have any role in drafting questions to be asked in a Federal grand jury proceeding?

A Yes, he did, as he indicated in his testimony.

Q Did he draft these questions for use in the Federal grand jury after he had read Albert Anzalone's immunized State grand jury testimony?

A It was at a point of time after he had read it. It was also at a point in time after he had been told not to use it.

Q But in fact he had read Anzalone's testimony before he drafted questions for your use in the Federal grand jury?

A That's my understanding, and he so testified.

Q You heard him testify that he gave you a note concerning the use or lack of use of the State grand jury minutes afterwards, after you had a conversation with him?

A Yes. I think I told him to put a note on there. In any event, he did put a note on there not to read

it. I was aware not to read it, but he put the note on there anyway out of an abundance of caution.

Q May I see that note, please?

A I believe it's up in my office. If your Honor recalls, at the prior hearing when Mr. Kaufman testified, I had asked that he be counseled if they wished me to produce that note and they did not indicate they wished me to produce it.

Q This is a rather abnormal proceeding. I would ask that he answer the question and not make comments.

A That comment was in my capacity as an attorney.

Q You have in fact read the memorandum of Paul Bergman; from Barry Ross to Paul Bergman?

A Yes.

Q That's exhibit 24 in evidence?

A Yes.

Q Does that document make any reference to specific portions of testimony by Albert Anzalone in the State grand jury proceedin[illegible]?

A I have re-read that memo in preparation for this hearing, and based on that re-reading, I can say that it does.

Q In fact, did it not note in the appendix, item 1-D, that the testimony of Albert Anzalone, the grand jury testimony of April 18, 1973, specifically page 24 and appendix

to that report?

A I would have to be shown the exhibit. Repeat the question.

Q Does the report indicate that attached as an appendix is a portion of Anzalone's testimony in the State grand jury proceeding?

A The appendix to the report referred to the State grand jury testimony of Mr. Anzalone, that's correct.

Q In this report on page 7, doesn't it in fact state that Anzalone had denied attending the meeting -- on page 7 -- then it refers in the grand jury proceeding of April 7, 1972; is that referred to in this report?

A That's correct.

Q Do you know what meeting that refers to?

A No, I don't.

Q Will you please examine it?

A From the context of the report, it appears that it's referring to the group who visited the Schlectingers' real estate office on a Sunday afternoon.

Q Did you ask Mr. Anzalone the identical question in the Federal grand jury proceeding?

A I doubt that I asked the identical question. I'm sure I covered the subject because the subject matter was one -- that was of obvious relevance of all the information

that was available to me, not from that report or Mr. Anzalone's State grand jury minutes.

Q Would it be a fair statement of fact that you asked the question that had a similar thrust to that question in the Federal grand jury proceeding?

A I imagine I did. I have no recollection of what I specifically asked, but I'm sure I covered that subject matter of that Sunday meeting in my questioning of him before the Federal grand jury.

Q Had you read this report, exhibit 24, prior to questioning Mr. Anzalone in the Federal grand jury?

A Long before; at some point long before.

Q Did you notice in this report, exhibit 24, there is reference to grand jury testimony of Anzalone wherein Anzalone said -- Anzalone observed the Charles family as they moved incidentals into their home on the afternoon prior to the fire, and later on, on page 7, Albert Anzalone and Vivelo were together one and a half hours before the fire -- Anzalone telephoned Vivelo he was locked out due to losing his key. Is a reference to that accurately on page 7 of that report?

A Might I suggest that Mr. Gogel point out the part.

I see what Mr. Gogel is referring to on page 7 of the report.

Q Did you in fact ask Albert Anzalone in the Federal

grand jury proceeding identical questions; the question is, did you ask Mr. Anzalone in the Federal grand jury questions identical and similar in language and in thrust as the questions referred to on page 7 of exhibit 24?

A Again, I know I covered the subject matter with Mr. Anzalone in the Federal grand jury. I doubt if the questions were identical, but they certainly covered that subject matter of his actions on the night of the fire, and my source for that again was not his State grand jury testimony, but interviews of him by Fire Marshalls, police detectives, any other materials that I did review.

Q In any event, those questions were asked after Mr. Kaufman read the grand jury testimony and gave you a draft, and after you read the report, exhibit 24; is that correct?

A It was at a point in time later, they were unrelated.

Q Did you ask these questions in the Federal grand jury of Anzalone on April 29, 1975, that was the date he testified; correct?

A I don't recall the date he testified before the Federal grand jury; April 29, 1975.

Q And was after you read Mr. Kaufman's drafted questions and after you read Mr. Ross' memorandum?

A At a point in time after, they were unrelated.

Q May I just have the responsive answer and the balance of that portion stricken?

THE COURT: I'll strike the part that they were unrelated.

THE WITNESS: Your Honor, may I just suggest something in my capacity as a U.S. Attorney?

I realize it is a bit awkward.

THE COURT: It is, to say the least.

THE WITNESS: My answer, it would be a matter that I would go into on redirect, I could make notes now as I'm answering questions of Mr. Gogel of the matters that I would like to go into on redirect.

THE COURT: Let me put it this way. When you say they were unrelated, isn't that something for the trier of the facts to determine? These memoranda are in evidence.

THE WITNESS: I could state the --

THE COURT: Your opinion.

THE WITNESS: It's not opinion, I could state the facts.

THE COURT: You weren't around when the first one was prepared. They are actually related to this same case.

MR. DEPETRIS: If your Honor wants me to answer

the question.

THE COURT: Really, when you get down to it, how can you say they are unrelated? These related to the preparation.

MR. DEPETRIS: But the questions were unrelated to the student assistant's memorandum and were unrelated to mr. Kaufman having read the state grand jury minutes, and I could state actually why, if your Honor cares for me to.

If I was an attorney, I would object to the question, it implies a relationship.

MR. GOGEL: It's been suggested maybe an additional member of the U.S. Attorney's office can come here and act as counsel for Mr. Depetris.

THE COURT: It would have to be somebody who had some familiarity with the subject matter.

MR. DEPETRIS: There is nobody. If your Honor prefers, I'll make notes of the answers and do redirect.

THE COURT: Do that.

It's holding up progress a little bit here, getting colloquy on each question. Take it from there. I've stricken the related part.

Q Do you have a copy of the draft questions prepared by Mr. Kaufman?

A No, I don't.

Q Can you explain where they are, if they have been destroyed, when and why?

A I assume they were destroyed once I made -- once I reviewed the draft questions and prepared my questions.

Q Do you know for sure that they have been destroyed?

A I don't know for sure.

Q Is it the common practice of the U.S. Attorney's office to destroy the draft memoranda of the legal clerical assistance who provides that information for you?

A Draft memoranda?

Q Draft questions; is it your usual procedure to destroy that material?

A If you're talking about draft questions to be used in questioning, yes.

Q Is there a memorandum in your office that is a known procedure to destroy them?

A No.

Q Did you receive any memoranda specifically referring to his reading of the grand jury minutes?

A No, I did not. I received no memorandum from Mr. Kaufman at all.

Q When did you discuss with him his reading of

those questions and answers of Mr. Anzalone in the State grand jury?

A May I refresh my recollection from looking at the affidavit?

Q Sure.

THE COURT: You want a reasonably accurate answer?

MR. GOGEL: I said certainly.

THE WITNESS: Do you want a time frame?

Q A date.

A Sometime in December or January of -- December of '74 or January of '75,sometime in that time frame.

Q What was the date that you were forwarded his draft questions?

A I would have to check to see when it was that we started examining the substantive witnesses before the grand jury. If you want an estimate right now I would say it would probably be in March of 1975.

Mr. Kaufman was questioned as to these matters when he testified, and I was familiar with the facts at that time relating to him and I belive his testimony was accurate, if that's any assistance to answer your question.

Q In what manner were you able to have him eliminate from his though process his knowledge of the testimony of Albert Anzalone before the State grand jury when he prepared

questions for your use?

A Very simple, Mr. Anzalone didn't testify to anything before the State grand jury. It was all denials and gave no useful testimony.

MR. GOGEL: I don't believe that's responsive, your Honor. I would ask that be stricken and a responsive answer given.

THE COURT: But your question is basically argumentative, it's a difficult question to answer, as a matter of fact.

Q Then I'll go on.

Mr. Depetris, did you read the memorandum, exhibit 23, from Assistant U.S. Attorney Moore to Robert A. Morse, U.S. Attorney?

A Yes, I did.

Q Was that prior to questioning Anzalone in the Federal grand jury?

A I would have read this. I would have made a brief review of that memorandum shortly after I was assigned the case on August 19th of 1974.

Q Did that memorandum contain specific facts from excerpts of the unionized State grand jury testimony of Anzalone?

A I read the memorandum. Based on that rereading,

I would say it does contain some references to Mr. Anzalone's State grand jury testimony.

MR. GOGEL: I have no further questions.

MR. WASHOR: Your Honor, may I ask just one or two questions?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. WASHOR:

Q Mr. Depetris, without being facetious, you understand the legal scope of immunity?

A Yes.

Q You knew at the time that this investigation was being conducted?

A Yes.

Q Of course, you knew at the time the difference between the transactional immunity that was approved by State Court of New York as compared to the co-extensive testimony of immunity in the Federal Eastern District and all Federal Courts; is that correct?

A Yes.

Q You also know that grand jury testimony is most secretive in nature; is that correct?

A That's correct.

Q And that the revelation of material from any

portion of grand jury testimony is a very most serious matter; am I correct?

A Yes.

Q Be it State proceedings or Federal proceeings; is that fair, within the gambit of your knowledge?

A I'm not familiar with State knowledge, I would assume they would have similar secrecy.

Q Did you ever take any steps to ascertain whether or not the release of any or all of the grand jury minutes was pursuant to procedure under the law?

A No, I didn't.

Q Now, this hearing commenced some time ago back in August, 1976.

THE COURT: Hearing in this case.

Q What we might label taint hearing.

A I believe it started in June.

Q Many months ago; am I correct, between the time that the issue was raised as to the question of any taint introduced from a State proceeding wherein the accused, Anzalone, received transactional immunity? Had you taken any steps to produce any type of document or court order that allows or permits revelation of any of the grand jury proceedings in the State court?

A I'm not sure how this is relevant to this

hearing, but no, I haven't.

Q Sir, is it not a fact that before Mr. Anzalone was subpoenaed before the Federal Eastern District grand jury that you knew that he had denied his complicity in the crimes that you were investigating him?

A The question is whether I knew it or from what source I knew it?

Q Didn't you know that he denied complicity in any crimes prior to subpoenaing Anzalone before the Federal Eastern District grand jury?

A I knew he denied it to the fire marshalls and the polive detectives.

Q Can you answer just the questions?

Did you know it firstly?

A I assumed he denied it in the State grand jury.

Q Did you know that he denied it firstly, the complicity in any crimes?

A I think I've answered the question.

Q I didn't ask from the source or how you knew it. When you issued the subpoena to Mr. Anzalone to appear before the grand jury, did you know that he had on prior occasions denied complicity in any of the crimes under which the grand jury was making its investigation?

A I knew there were prior occasions when he had

denied it.

Q Did you know any particular occasion where he admitted his impropriety?

A No.

Q Did you speak to any Assistant District Attorney of New York State, more particularly, Staten Island, prior to subpoenaing Mr. Anzalone to the Federal Eastern District grand jury?

A No, I didn't. Well --

Q Do you want to think about that for a moment?

A What was the date he was subpoenaed?

Q April 29, 1975.

A I did inform Mr. Brastead at the time that we commenced the grand jury investigation of the fact that we were commencing a grand jury investigation.

Q You did have a conversation with Mr. Brastead, he's the District Attorney of the County of Richmond?

A To that extent, I did.

Q At the time that you conversed with him, did you make any inquiry as to how, why or when, under what conditions he obtained the grand jury minutes, and had permission to release them to the authorities, FBI, or anybody within the agencies of the Government?

A No, I did not.

Q Sir, you have stated here that the source of the Government's presentation leading to the indictment does not emanate from the testimony of the defendant in a State proceeding; am I correct?

A That is correct.

Q You knew that he did not admit in the State proceeding as to any violation of law before you subpoenaed him before this grand jury bringing back this indictment; am I correct?

A I assume he did not admit it before the State grand jury. I did not know for a fact, because I had not read it. I assume that his testimony was consistent with what he told the fire marshall and the police detective, of which I was aware, and that was denials.

Q you assumed, you say, you did have the grand jury minutes unread, within your possession; am I correct?

A That is correct; U.S. Attorney's office had.

Q If they had it then you had it; am I correct, right?

A In a sense, yes.

Q And you did have a law assistant who did go through his minutes; am I correct?

A That's correct.

Q And notes were taken by the law assistant and

other individuals via these reports as to certain of the contents of Anzalone's grand jury minutes in the State proceedings; am I correct?

A That's correct.

Q And you read those reports; am I correct?

A That's correct.

Q And as a matter of fact, wouldn't it be fair to state in nowheres in any of those reports referring to Anzalone's testimony inthe State grand jury, were there any admissions as to inculpating himself in any of the crimes charged?

A That's a fair statement.

Q Would it be also fairer to say that you more than assumed he denied it, you knew that he denied the commission of any crimes in the State grand jury; am I correct?

A I can't say.

Q Okay, you can't say.

A I assumed that he had.

Q Why did you call him into the Federal Eastern District grand jury?

A Primarily because he had been implicated in the crimes by Mr. Mattalon, and corroborated to some extent by Nancy King.

Q What was the date of the report referring to

Anzalone's testimony in comparison to th date of Mattalon's first report?

A I believe Mr. Anzalone testified before the State grand jury on April 18, 1973, and the FBI report, the interview of Mr. Mattalon containing the incriminatory investigation was dated March 5th of 1974.

Q And you got the grand jury minutes of June of 1973; am I correct, almost a year before; am I correct?

A U.S. Attorney's office.

Q Had access to these grand jury minutes, not only Anzalone, but the entire grand jury minutes, almost a year prior to Mattalon, if we may characterize it, turning toward being a cooperative witness?

A I did not have it; U.S. Attorney's office.

Q You represent the Government, don't you, Mr. Depetris, your office, the U.S. Attorney's office, be it the law assistant that was hired, yourself, prior U.S. Assistants or the Civil Rights Division, it's all part of the U.S. Attorney's office?

A I'm just answering your question, Mr. Washor.

Q I'm not trying to suggest that you are to blame as an individual when I talk about you, I'm referring to the U.S. Attorney's office, is it not a fact that they had the grand jury minutes of the entire proceedings in the Staten

Island grand jury, Richmond County, almost one year prior to Mattalon becoming a cooperative witness?

A That's correct.

Q And as a matter of fact, the grand jury minutes were read, if not by yourself, by members of the U.S. Attorney's office, at least almost a year prior to Mattalon becoming a cooperative witness; am I correct?

A Mr. Moore had read it.

Q At least one person?

A Had read it, I believe, in the summer of 1973.

Q So that I'm reasonably accurate as to the time, if it's not a year, it's nine months; am I correct?

A That's correct.

Q And the reports that are now marked in evidence that refer to Anzalone's grand jury minutes, they also were prepared prior to Mr. Anzalone testifying in the grand jury; am I correct?

A State or Federal?

Q Federal.

A Federal, sure.

Q Now, sir, any particular reason for getting, give immunity to Mr. Anzalone? Did you have a reason for giving him testimonial immunity bearing in mind the knowledge you had?

A Yes, there was a reason.

I don't see the relevance of this, your Honor.

THE COURT: Go ahead.

Q Answer the question. Give us the reason.

A Again, I don't see the relevance, but I'll be glad to answer it.

Yes, the facts, the testimony of Mr. Mattalon and Mr. King had pointed towards four or five people as being implicated in these crimes, and the grand jury and myself wanted to hear the testimony of all the people involved.

Q And you had his prior testimony, didn't you, under oath?

A No, I didn't have it.

Q Didn't the U.S. Attorney's office have it, related to the same subject matter?

A We couldn't use it.

Q You did use all the other testimony, didn't you, sir?

A What testimony?

Q All the other grand jury testimony of the other witnesses?

A Yes.

Q You used every bit of it other than Anzalo[illegible]?

A I can't say I used every bit of it.

Q You read Mattalon?

A Mattalon testified.

Q He didn't testify --

A In the State grand jury. He did not sign the waiver of transactional immunity. In a sense he exercised his Fifth Amendment before the State grand jury.

Q Did you read the other minutes of the other witnesses?

A Yes, I did, for the State grand jury.

MR. WASHOR: I have no further questions.

THE COURT: Anything you want to bring out as a result of that cross-examination?

MR. DEPETRIS: Just a couple of things on redirect.

THE COURT: One clarification.

You agree that you had read the State grand jury testimony of other witnesses?

MR. DEPETRIS: I read all the State grand jury transcripts other than the testimony of Mr. Anzalone.

THE COURT: Did that include any defendant in the case other than Anzalone?

MR. DEPETRIS: Any of the defendants in the Federal case? I don't believe any of the others testified. Mr. Vivelo exercised his Fifth Amendment

privilege. Mr. Barberi wasn't called and Mr. Lombardi was not called before the State grand jury.

MR. WASHOR: I think that ought to be documented. I believe Mr. Depetris is giving that to the best of your recollection none of the others accused that were on trial here testified in the State grand jury. I'm not trying to pin you down.

It would seem to me that your answer seems to the best of your recollection, and that is a very important factor.

MR. DEPETRIS: I turned over everything pursuant to Rule 16. I could double-check.

MR. GOGEL: May we have a short recess for a minute?

THE COURT: How long is this going on?

MR. WASHOR: I would assume the matter is concluded.

MR. DEPETRIS: There is a list of the grand jury witnesses in Mr. Moore's report. I'll double-check to make sure that my recollection is accurate. That's correct, Mr. Lombardi and Mr. Barberi were not called, and Mr. Vivelo refused to sign a waiver of immunity.

Just very briefly, a couple of points on redirect.

THE COURT: Go ahead.

MR. DEPETRIS: Mr. Gogel questioned me about the meeting at the real estate office --

THE COURT: Assume I'm familiar with -- I'm familiar with what you are talking about.

MR. DEPETRIS: I was aware of that meeting from several other individuals.

In fact, in my extensive notes, 25 for identification, I have a separate category of all the people who had been referred to the meeting at the real estate office and there were numerous people, too numerous to mention here, and that was the source of my knowledge of the meeting at the real estate office, and that was the reason that I had questioned Mr. Anzalone about that before the grand jury.

One of these individuals had identified Mr. Anzalone as having been present on that Sunday afternoon; others had not, and I asked him that question.

The other specific matter that Mr. Gogel referred to me on page 7 of exhibit 24 relating to the subject matter of his actions on the night of the fire, and, of course, we have the interviews of Mr. Anzalone by the fire marshall and the police detective that went into that subject matter, and it was obviously a logical subject matter to question him about before the Federal

grand jury; so, again, I did not use these two exhibits in any way in connection with the presentation of the grand jury.

I guess that would be all the testimony that I would have to proffer; couple of things that I would point out in a conclusory legal fashion to your Honor.

THE COURT: About what?

MR. DEPETRIS: About this issue, but I'm still testifying.

THE COURT: Is anybody going to submit, want to submit any memorandum of any kind?

MR. WASHOR: I feel that this is the type of issue that is a fact-finding basis, the law is reasonably clear if there is a violation we know the result.

THE COURT: I just don't want anybody to feel that I did not give the opportunity, if that's what you wish.

MR. WASHOR: In light of the fact that you may take judicial notice of the State laws, I'm sure you're most aware because of your background, that grand jury proceedings and minutes cannot under the New York State law be released other than by Court order and since this taint hearing imposes a burden upon the prosecution to show that their investigation

47 and their trial and their evidence before their grand jury is free of taint, I would request that you impose upon the U.S. Attorney's office to bring forth an order, if one should exist. If they had gotten those grand jury minutes without proper authorization, not only is Anzalone out in a position, there is an original taint, but this may have far-reaching effects which concern -- I'll only be reasonably limited now, but, Judge, there is no presumption in favor of the existence of a Court order that can only be obtained by application to a court.

I would request that you ask the U.S. Attorney to make the necessary inquiry.

I further suggest that the one kind of a piece of paper forcibly, unlike many of the FBI notes that they use to copy onto 3500 material and then destroyed; it's part of a record, it has to be in the clerk's office.

THE COURT: Are you arguing in effect that it is incumbent upon the U.S. Attorney to make sure that when he receives from the District Attorney of the state, which I take it is the way this transpired, copies of State grand jury minutes, that nevertheless the U.S. Attorney is under an independent obligation to verify that the State official acted in accordance

48 with law?

First of all, there is the well-known presumption of law that a State official does that in accordance with the law. It would seem tc me that if you have eivdence to the contrary, the burden is upon you to come forward if you're going to make a point of that, and in addition buttress it with some authority.

Very frankly, regardless of the legality question, I think the fundamental question here under the Federal cases that I have to struggle with is whether I could make up my mind with any degree of certitude that the Government has sustained its burden of showing that the evidence in this case against the defendant Anzalone came fromsources independent of his grand jury testimony, and I assume I'm privileged to look at the character of his grand jury testimony in that connection.

MR. WASHOR: Sure.

THE COURT: And it seems to me that is the real question.

I've given you my views off the cuff on the legal points you've raised. If you feel that it is something worth pressing, you are at liberty to send me any authority which says my view of it is wrong.

MR. WASHOR: I've made some basic inquiries.

49 Being a non-public official, I've walked into a brick wall.

THE COURT: Surely if an order has been made in the State Court, wouldn't that be a matter of record?

MR. WASHOR: We have been over to Staten Island on or about June, 1973, when these matters were turned over to the Government, let's say from May, June and even July, I find no applications made on the record. Remember these are expert applications in camera, they are matters of record, but not really public record. This is the kind of a thing that a logistical problem is served -- U.S. Attorney's office calls Staten Island -- do you have an order.

THE COURT: It seems to me you could go to the Appellate Division, Second Department, and get an order from them directing that the Clerk of the Court reveal to you -- since it's essential to a proceeding in this Court, if you consider it essential; if they give you the run-around over there, that's what I would do.

MR. GOGEL: Is this not the forum? This is the forum where the point is being made, it's a further extension.

THE COURT: As I said a moment ago, the presumption is that a public official performs his duty in accordance with law, the burden is on someone

who challenges the performance of his duty to come forward with evidence that he did not, and I'm suggesting if you believe that such evidence exists --

MR. WASHOR: It's the non-existence that we are trying to find out.

THE COURT: Let me put it this way:

You get an affidavit from somebody working in the court at the time or the District Attorney's office or what have you.

MR. GOGEL: Would your Honor issue some order, subpoena, for production of proof?

THE COURT: I can't do that, I can't subpoena the State in my judgment.

MR. WASHOR: You could direct a phone call to be made by the U.S. Attorney. It's amazing the response you get when you are able to use the title.

THE COURT: It's an interesting point. I think it's your baby, not mine, for the reasons I've explained.

MR. WASHOR: Okay, Judge.

THE COURT: I honestly feel if you think there is anything to it, you'd better get going and convince me.

MR. WASHOR: Okay.

MR. DEPETRIS: I wanted to call very briefly

some things to your Honor's attention. I would call to your Honor's attention the Catalano case.

THE COURT: Incidentally, I have those cases.

MR. DEPETRIS: I think that's most directly applicable to this situation because of the situation where the State grand jury testimony was as this here circumspect, nothing revealing in it, and so it's very applicable.

But number one, I would suspect that we have shown that we have independent source of all the evidence that was used;

Number two, we have shown that the grand jury testimony was not used in any way with respect to these proceedings,

And, three, in any event we have shown that the State grand jury testimony, Mr. Anzalone, was essentially worthless, and all the information germane to this case that was in his State grand jury testimony was available from other sources and most specifically we have the interviews of Mr. Anzalone by the state police detective and the fire marshall which contained his denials as to these offenses.

So under these circumstances, in my mind this whole issue is frivolous and much to-do about nothing.

THE COURT: Well, it may be.

52

MR. WASHOR: I week from Friday?

MR. GOGEL: One thing, you stated the Government must prove that there was not an independent source not necessarily the action of Mr. Depetris, the Government as a whole and as an entity.

THE COURT: The Government must prove it.

MR. DEPETRIS: I'll agree with that statement, the Government must prove it.

THE COURT: Okay, gentlemen.

(Whereupon Court stood in recess for the day in this matter.)

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA.,

- against - 75 CR 751

ALBERT ANZALONE,

Defendant.

----------x

United States Courthouse
Brooklyn, New York

September 24, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE J. NEAHER, U.S.D.J.

HENRY LEGENDRE, ESQ
ACTING OFFICIAL COURT REPORTER

Appearances:

D. G. TRAGER, ESQ.
United States Attorney
For the Eastern District of New York

BY: RONALD DE PETRIS, ESQ.
Assistant U.S. Attorney

BARRY AGULNICK, ESQ.,
MICHAEL WARSHOR, ESQ.,
Attorneys for the Defendant.

THE CLERK: Criminal Cause for Sentencing U.S.A. vs. Albert Anzalone.

MR. WARSHOR: Good morning, your Honor.

THE COURT: I understand that there are motions pending.

MR. WARSHOR: Decision relative to the motions that have been made.

THE COURT: Right.

Now, I'm directing my attention, as I recall to a number of motions that have been made from time to time, which I believe I ruled upon. I believe the only open matter is the taint hearing. The only open matter is the question of taint. I have read the testimony adduced at some other hearings and the State Grand Jury testimony of Mr. Anzalone and have seen the exhibits, and I find that in view of the testimony of the Government's conduct of their investigation, that that investigation was not the fruits of any testimony given by Mr. Anzalone before the Staten Island Grand Jury, and, I therefore, overrule the motion with respect to the claim of tainted evidence used against him at the trial.

MR. WARSHOR: I suppose it would be appropriate to except to the ruling.

THE COURT: Of course, and it would be something

that you will probably take up in connection with any appeal. I believe that's the only matter.

Now, have you had an opportunity to review the presentencereport?

MR. WARSHOR: Yes, I have.

THE COURT: Is there any reason why sentence should not be imposed at this time?

MR. WARSHOR: No legal reason, your Honor.

THE COURT: All right. Now, I assume you wish to make a statement.

MR. WARSHOR: I would like to be heard if I may.

Your Honor, the Probation Report is reasonably complete from the standpoint of the factual background, while some of the allegations contained in what would be called a synopsis of the facts of the case are in dispute, they are as much in dispute at this point as they were during the course of the trial. It behooves me to go behind the jury verdict at this time so I will notallude to that. I prefer to talk about the accused so that your Honor can impose whatever sentence you feel is just under the circumstances.

We are dealing with a most serious crime. I don't believe in good conscience, I could address any court and minimize the nature of the alleged criminal conduct that resulted in the conviction here.

A L B E R T A N Z A L O N E who resides at 343 Milton Avenue, Staten Island, New York, being called as a witness, not sworn at this time.

Q What is your name?

A Albert Anzalone.

Q Where do you reside?

A 343 Milton Avenue.

Q Mr. Anzalone do you recall appearing before this Grand Jury at one of its prior sessions? Do you recall that?

A Twice.

Q You appeared twice?

A Yes.

Q And you were requested to waive immunity, is that correct?

A Right.

Q And you indicated upon advice of your attorney you refused to waive?

A Right.

Q And you indicated that you would testify before the Grand Jury if you received immunity, is that correct?

A That's right.

Q And at a prior session I think the matter was considered by the Grand Jury and your request for immunity

GOVERNMENT EXHIBIT 2 EDNY 75-[illegible]-1

ANZALONE

was denied and you were so informed?

A That's right.

Q Now at this time I'd like to inform you that this morning this Grand Jury decided to reconsider the denial of immunity to you and that they did reconsider it and they have now decided to grand to you immunity. Do you understand that?

A Yes sir.

Q Do you understand that having been granted immunity that you cannot be tried?

A Yes sir.

Q Or no proceedings can be brought against you as a result of the fire at Milton Avenue?

A Yes sir.

Q Do you also understand that the immunity which you received does not include immunity from perjury?

A Yes sir.

Q In other words we're not suggesting that you would but that if during this investigation you perjure yourself, you deliberately made an untrue statement concerning a material fact that you could be indicted for perjury?

A Yes.

Q You understand that?

A Yes.

ANZALONE

Q Do you have any questions now regarding your rights, having received immunity?

A No. I'm no longer considered a suspect.

Q That is considering you cannot be charged with the crime in any court. You fully understand?

A Yes sir.

Q And you are prepared to testify?

A Yes sir.

Q Would you come forth and place your left hand on the holy bible?

(WITNESS SWORN AT THIS TIME AND further testified as follows:)

Q Mr. Anzalone you presently reside at 343 Milton Avenue in this county?

A Yes sir.

Q Approximately how long have you lived at that location?

A Almost five years.

Q You occupy the home with your family?

A Yes sir.

Q And of what does it consist, your family?

A I have a wife and two daughters and one son.

Q By whom are you employed?

A Swiss American Corporation.

ANZALONE

Q What type of work do you do Mr. Anzalone?

A I'm Assistant Vice President and Treasurer.

Q How long have you been employed by that company?

A Approximately twelve and a half years.

Q Do you recall the morning of April 22, 1972, that's the date of the fire?

A The morning after?

Q After midnight?

A Oh, okay.

Q Do you recall that? Were you at home on that particular night?

A Yes sir.

Q Are you acquainted with your neighbors in and about your home?

A Oh, yes.

Q You're friendly with them I assume, is that correct?

A Yes, some very friendly.

Q Did there come a time when you learned that the Charles family, a black family, was to move into 351 Milton Avenue?

A Yes.

Q When did you first learn about that Mr. Anzalone?

A Yes. I don't really know. You mean prior to the fire?

ANZALONE

Q Yes, prior to the time of the fire?

A Thirty days. I don't know I really couldn't say.

Q It was a period of some weeks is that correct?

A Oh yes.

Q How did you learn about it?

A Just normal talk on the block, that's all.

Q And what was said Mr. Anzalone? What was the nature of the conversation?

A It was understood - not understood it was said that a negro family was moving into whatever the number may be. That's the extent of it you know.

Q Was it the feeling of the neighborhood opposition to having a black family come into the neighborhood?

A The neighborhood or my feelings?

Q Talking about the neighborhood?

A The neighborhood in general I'd say the feeling they probably didn't want them under certain circumstances described in conversations. In other words it was implied that this was a blockbusting deal - forget it you know, it wasn't right.

Q Were you invited to attend any meetings of the neighbors at about this time.

A No, me no.

ANZALONE

Q Did you attend any meetings?

A No sir.

Q Your discussions were what? Out on the street?

A On the sidewalk.

Q Who discussed it with you that you recall Mr. Anzalone?

Well I'd suggest about everyone - not everyone on the block but it was a discussion to say to name five names or ten names I wouldn't say that would be correct. I mean its just a general discussion amongst the neighbors.

Q Do you recall that sometime before the fire that the building, 351 Milton Avenue, was vandalized?

A Yes.

Q Did you observe the damage?

A Oh, you mean the windows, yes.

Q What did you observe about the building?

A The windows were broken. My son told me.

Q And did you see that they were broken?

A Oh, I went out and looked, yes.

Q Did you ever see Mr. or Mrs. Charles on or in and about the property?

A Let's say I think I've seen them. I was never introduced to them all right. You know, yes.

Q We would assume that it was the Charles family?

ANZALONE

A Right.

Q What were they doing when you observed them?

A Just pulled up in the car and went in the house and came out. That's the extent I observed them.

Q Did you see them move any of their things into the building?

A No.

Q Just in and about the property?

A Yes.

Q Did your wife attend any meetings of the neighborhood?

A A meeting, no.

Q You say as far as you know, no formal meetings?

A No, no formal meetings.

Q But it was the general discussion of the neighborhood that this was a blockbusting operation?

A Oh yes.

Q Did you feel that it was Mr. Anzalone?

A Did I feel that it was? Personally I might have, yes.

Q Did you feel economically it might reduce the value of your property?

A No question about it.

Q You'd say this is the feeling of them generally?

ANZALONE

A That's right.

Q Do you know Anthony Vivelo?

A Very well.

Q How long have you known him?

A Three and a half years, about three years.

Q You know him as a neighbor principally?

A Yes.

Q Have you, I'm talking now prior to the fire, you ever visit Mr. Vivelo in his home?

A I visit him quite often.

Q Your wife also?

A Oh yes.

Q Do you reciprocate and invite him to your home on occasion?

A Quite often. As a matter of fact in the summer its almost every night one way or another - one house or the other.

Q Prior to the fire on any of these visits that you had with Mr. Vivelo was there any discussion about the fact that a black family....

A Oh we probably discussed it you know. We didn't like the idea but that was the extent of the conversation.

Q Did Mr. Vivelo express to you that he felt it

was a blockbusting operation?

A Him personally?

Q Well, in the discussion?

A In the discussion we all felt it.

Q Including Mr. Vivelo?

A Including everyone on the block.

Q When did you last see Mr. Vivelo prior to today?

A Yesterday afternoon.

Q Did you inform him that you had received another subpoena?

A I informed him two weeks ago when I received the first one. I received the second one the other day.

Q You told Mr. Vivelo about it?

A Sure.

Q Any particular reason why you spoke to Mr. Vivelo about the fact that you were going to appear before the Grand Jury again?

A No particular reason - just good friends.

Q Did you discuss with him the case again, you know what I mean?

A No sir.

Q No discussion about the case?

A No only wondered why you were calling me.

ANZALONE

Q Going back now to April 21, 1972 and I'm thinking now of the night before the fire?

A Yes.

Q Did you work that day if you recall?

A Yes.

Q And what time did you get home from work?

A I don't recall but I'd say between 6:30 and 7:30, but I really don't...

Q Is that you regular time?

A That's my regular time. Incidentally, I have beenQinterrogated by a representative of the New York City Fire Marshal and a detective from the 122 Precinct.

Q Only by a detective?

A Both.

Q By both?

A At the same time.

Q And you gave them statements relative to the fire?

A Yes, I gave them statements and I asked them for copies of the statements.

Q And I presume you never received them?

A No, I didn't so I don't consider that statement valid.

Q Because you didn't get a copy?

ANZALONE

A That's correct.

Q Well, at the time you made the statement to both agencies they were truthful statements were they not?

A I'd say so, yes.

Q Why do you consider them not to be valid?

A Because I'll be quoted on each one of them and I don't recall a year ago what I said and I mentioned that at the time they took the statement and I also mentioned at the time I was subpoenaed by the Fir Marshals that there was no business for a detective to be there.

Q You didn't feel there was?

A I didn't think so. I was being subpoenaed by the Fire Marshal not a detective from the 122 Precinct.

Q Well, you say on the night before the fire and I'm talking about the 21st now, you got home at 7:30?

A Approximately yes. Don't hold me to it because I really don't know. I could have gotten home 9 o'clock I don't know.

Q We're well aware of the fact you didn't make a memo or notation of when you returned?

A Right.

Q But about the usual time?

A Right.

Q Tell us what did you do after you returned home from work on the 21st Mr. Anzalone. How did you spend that evening? Do you recall?

A I ate I know that and spent some time outside and spent the rest of the time in the house.

Q What time did you retire?

A Oh, I don't think I retired until 3, after 3 that morning.

Q Did you see Mr. Vivelo that night?

A Oh yes.

Q Would you fix the time if you can and the circumstances?

A I would say it was not before twenty after 12. After 12, 12:30 I seen him.

Q Was this a regular visitation time Mr. Anzalone or was it unusual to see him this late?

A Not unusual that I do see him at this particular hour especially Friday evening or any other evening for that matter. It wasn't a normal visit. I believe he lost his key or forgotten his keys.

Q You say you saw him I think you said not earlier than 12:30 AM?

A Right.

Q Where?

A My home.

Q What were you doing at the time he came to your home? Do you recall?

A No, I could have just been sitting down watching television, reading a book.

Q Had you retired?

A No.

Q I presume your children were in bed, is that a fact?

A Yes.

Q What about your wife?

A My wife was up I believe so or might have been upstairs reading a book. I mean she was up. Let's say that.

Q Could the visit have been nearer to one o'clock, 1 AM?

A I don't think so. I think it was 12:30 but I don't know - could have been close to one but it was not after one.

Q It was not after one?

A No.

Q Well, would you fix it sometime between say 12:15 and 1?

ANZALONE

A I can't. I don't remember what I ate last night. To the minute or the half hour, how can I remember a year ago. I'd say approximately 12:30 he entered my home.

Q Now this is not unusual yo. say?

A No, it is not.

Q On prior occasions when he came to your home at this hour was it a social visit?

A Yes.

Q Coffee or beer?

A Coffee session - couple of drinks.

Q Now on this particular night, April 21st did you have a conversation with Mr. Vivelo? Did he make any statements to you?

A He came in the house. He said I lost my keys or misplaced them can I use the phone. Sure.

Q Is that all he said he lost his keys?

A He couldn't get in his house.

Q He told you that?

A Yes.

Q Did he say where he last had his keys?

A I don't know. He forgot them home or lost them I don't know.

Q Did he tell you his wife...

ANZALONE

A He must have tried to get in his house. Apparently his wife was sleeping.

Q Did he tell you that?

A Yes, I think so.

Q What is your best recollection?

A That he had lost his keys.

Q Did he indicate to you that he tried to wake up his wife?

A8 I believe so but he might have said also that the lights are out. I don't really know.

Q You don't recall what he said?

A No.

Q On these visit at about this time did Mrs. Vivelo ever accompany her husband to your home?

A Oh sure.

Q She usually did?

A Yes.

Q On this particular occasion she did not, is that correct?

A No.

Q Was there any explanation why she wasn't with him on this particular night?

A Well, as I just said I believe she was sleeping and I know he just got home from work.

ANZALONE

Q So he told you in substance he couldn't get in his home because he lost his keys?

A Yes or he left them home. I don't know.

Q Did you ever see the keys that he had to his house?

A No.

Q You never saw them?

A No.

Q After he told you that Mr. Anzalone what happened?

A I believe he called his wife. My wife made coffee for all of us.

Q Did you hear him call his wife on the phone?

A He used my phone, yes.

Q Did you hear what he said?

A No.

Q After he made the call did he make any statement to you as to what had happened?

A No.

Q Did he indicate to you that he had succeeded in getting his wife awake?

A He didn't indicate to me but he left the house and went into his house so I presume he awakened his wife.

Q Well, after he made the phone call from your house to his house, he didn't tell you whether he had

succeeded in awakening his wife?

A I don't recall, but he could have.

Q You don't recall?

A I don't recall.

Q Then did you invite him to stay?

A Yes, for coffee.

Q Your wife was awake, I presume?

A Oh, she made the coffee.

Q You had coffee and cake with Mr. Vivelo?

A I don't know if there was cake but we had coffee. What's so unusual about a visit like this? I don't understand.

Q Maybe there is nothing unusual about it. This is the night of the occurrence. It will be for the Grand Jury to determine whether there is or not. I assure you we're well aware of the fact it is difficult to recall what one did even 48 hours ago. We're aware of that. What we're interested in is your best recollection.

A My best recollection - he was there and had coffee.

Q About how long did he stay at your house after he made the call and while having coffee?

A Half hour.

Q Did you have any discussion with him during

ANZALONE

that half hour while having coffee?

A Oh sure.

Q Did you discuss the Charles situation?

A To the best of my knowledge, no.

Q Might you have discussed it?

A I might have discussed it at any time.

Q Had you learned on this day when you returned from your job that the Charles family had started to move in?

A Well, I don't really think I learned on that particular night they were moving in. It was obvious they were coming in shortly whether it be that particular night or the following night because I think maybe three or four days prior we had known that they had moved some type of items in the house and I think maybe a day or two after or before we had a whole bunch of hippies sitting out.

Q Did your children tell you that night?

A Oh I was out that night. This was late at night.

Q I'm talking about the Friday night that we're talking about when Vivelo had coffee did you learn from your children when you returned from work that actually the Charles family had started to move their belongings in the house? Did your children tell you that?

ANZALONE

A I don't recall.

Q Are you prepared to state that while having coffee or while he was in your house there was no discussion about the Charles family or don't you remember?

A I don't recall.

Q Might there have been discussion about it?

A I said there might have been discussion at any time.

Q You say that Mr. Vivelo felt that it was a blockbusting operation together with the rest of you?

A I would say so. Its just talk. I mean how do I know what he actually felt.

Q Approximately what time did he leave your home?

A I'd say approximately half hour maybe 35 at most 40 minutes after he entered my home. Assuming he entered at 12:30 he must have left maybe 1 o'clock 1:5 after something like that.

Q When he left your home did you go outside with him?

A No. I walked him to the front door - opened the front door and let him out.

Q How close is your home to 351 Milton Avenue?

A 351 being Vivelo's house?

Q 351 is the house that was burned?

ANZALONE

A How close am I? Semi attached homes, 1, 2, 3rd dwelling.

Q I show you this picture, People's Exhibit #1 and call your attention to the X in the photograph?

A That's my home X 1, 2, 3.

Q And the circle is the house that was burned, is that correct?

A Right.

Q When you went to the door with Mr. Vivelo did you see where he went?

A Well I could see him crossing the street and that's about it.

Q Did you have him under observation until he actually entered the house?

A I don't recall.

Q You didn't see whether he went home. You believe he went home?

A I believe he did.

Q Did you see anyone else in the street at this time?

A I would say I did not see anyone else but I really don't know because it is not unusual for people to be out in the street at night time.

Q Do you know Mr. Glasser who lives in 351?

ANZALONE

A Is that the house here?

Q That was burned?

A Oh, next to it.

Q Do you know him?

A Well I know him - good morning, good evening.

Q Did you see him in the street?

A Did I see him in the street? Not at that particular moment.

Q Well, at any time?

A Oh, I saw him in the street when I ran out after I called in the fire.

Q After you called in the fire?

A Yes.

Q But before the fire you didn't see Mr. Glasser?

A I don't recall seeing anyone.

Q There was no smoke at this time is that right and I'm talking around 1AM or 1:05 AM?

A If there was I certainly didn't notice it.

Q After Mr. Vivelo left what did you do Mr. Anzalone?

A Well, I do recall going to the bathroom.

Q I beg your pardon?

A I do recall going to the bathroom. Well, I had things to do, shower.

ANZALONE

Q And did you go to bed?

A No.

Q How long did you remain in the bathroom?

A I wouldn't know.

Q Did you shave?

A Yes.

Q What time was that sir?

A Sometime after one.

Q Is it customary for you to shave in the early morning?

A It is not unusual for me to shave at 4 o'clock in the morning.

Q Why is that?

A Because the next morning I did have to get up for work but also had to go to the circus.

Q With your family, I presume?

A Right.

Q You had plans for sometime to go to the circus?

A First go to the office and then afterwards to the circus. Ibelieve that was a Friday and Saturday is the fire, yes.

Q Well now, while in the bathroom shaving or otherwise involved, did something attract your attention?

ANZALONE

A Yes, a funny smell.

Q Could you describe it for us please?

A It was just an unusual smell. I went into my daughter's room. Looked around. Didn't see anything.

Q Was it the smell of burning wood?

A It's hard to say because fog at times smells like that especially [illegible]

Q It appeared to you to be smoke from fire?

A At that particular moment appeared to be something unusual. I'm not how unusual I don't know but I did check my daughter's room.

Q Did you check your house?

A In general yes. I went downstairs and walked outside to put the bike away in the shed. Saw more smoke. Then it was obvious where it was coming from.

Q You have a shed in back of your yard I assume?

A Yes.

Q Did you go out to observe more than [illegible] smoke that you had observed or did you simply go out to put the children's toys away?

A Put children's toys away. I [illegible] to put the bikes away.

Q And what time was that, sir, approximately?

A [illegible]

ANZALONE

before 1:30 but I really don't know.

Q When you went out in the backyard what else did you observe?

A I observed smoke the first time.

Q The first time you actually saw smoke?

A Yes, what apapeared to be smoke and appeared to be coming from somewhere down in that direction.

Q And is this toward 351?

A Yes sir.

Q Could you describe the smoke for us? Was it a large amount of smoke?

A Oh I knew it was a large amount of smoke, yes.

Q Could you see where it was?

A It looked like it might be coming from either that house or any other house afterward. Hard to determine.

Q How far is your backyard from the backyard of 351?

A Same distance in front of houses.

Q I show you this photo #2 as of May 2, 1972 do you recognize the area shown in that photograph?

A Oh yes.

Q That is the back of 351, is that correct?

A Yes.

Q Is that where you saw smoke coming from?

ANZALONE

A I saw it coming from that direction, right.

Q Was it close to 351? Appear to be coming out of 351?

A Hard to say. There was a lot of smoke coming travelling upward. How do you know? I wouldn't know. I did not see flames the first time. The second time I saw something that appeared to be flames.

Q When you made the observation of the smoke, what did you do after that?

A I yelled for my wife. She came down and called the Fire Department.

Q And did you call the Fire Department?

A Did I call them? Yes.

Q And do you recall what you said to the Fire Department?

A To the best of my knowledge I believe I said there is a fire on Milton Avenue. Can you please send some engines down. That is not word for word but that is basically what I said.

Q Did they ask you at that time to identify yourself?

A Yes.

Q And did you?

A No.

ANZALONE

Q Any reason why?

A I didn't particularly care to. I wouldn't identify myself if I rang an alarm on the corner, would I?

Q I can't understand. Why were you afraid to identify yourself?

A I just didn't particularly care to. I didn't think I'd have to. I reported a fire - period.

Q8 Do you know where you informed the Fire Department the fire was?

A Where I informed them?

Q Yes?

A I said on Milton Avenue I'm sure.

Q You sure about that?

A I think I m sure.

Q You didn't say in the rear of 351 Milton Avenue?

A Did I say that? No.

Q When they asked you to identify yourself, you refused?

A That's right.

Q Did you do that because you believed that if you identified yourself that you might be a suspect?

A You're taking words from my old statement. I'd say yes.

Q You don't object that I use your statement, right?

ANZALONE

A I don't object.

Q You felt at that time if you identified yourself you would be considered a suspect?

A Definitely.

Q After you made that call did you leave? Did you go outside?

A I went out to the back again or the front . I know I went out to the back again but I may have went to the front to see if they had come, the Fire Department.

Q In other words you did expect they'd come to the location of the fire?

A I expected them to come to Milton Avenue off Tysons Lane.

Q Even though you had not given them the number?

A I think I said Milton Avenue off Tysens. You have my testimony on tape you can play it back. You know exactly what I said.

Q We know exactly what you said?

A I don't recall exactly what I said.

Q When you went out the second time what was the condition then?

A The second time looked like flame. Not flames shooting out. I don't know how to describe it. When you see a light bulb going on and off, like flashing in back.

ANZALONE

Q Did you see where it was coming from?

A Yes, this time sure I did.

Q Where was it coming from?

A This particular house.

Q Now where were the flames Mr. Anzalone? Were they - did they break through the house?

A No, you see I believe the slight flames that I saw were coming through the boards that were on the windows. In other words through maybe little cracks that where it looked like light was coming out.

Q The rear windows of 351 were boarded up before the fire, is that correct?

A Yes.

Q And you believe you could see flames?

A I could see the light of the flames protruding through those particular beams.

Q Did you see anyone in and about the property at that time?

A No. There was smoke there. If there was anyone there noone could have seen them.

Q You saw no one the first time you made the observation of the smoke either?

A No. I saw no one. No.

Q Do you know where Mr. Vivelo was at that time?

ANZALONE

A Do I know where he was?

Q Yes?

A No, I can only presume where h as.

Q After you observed the flames, what appeared to you to be flames, what did you again do?

A Called in again.

Q And did you call or your wife call?

A Well, we both got on the phone. I don't know who actually dialed the number both we both got on the phone the second time.

Q What did you say or your wife say on the phone?

A That there was a fire on Milton Avenue. I don't know the exact words.

Q You again refused to identify yourself, is that correct?

A Yes.

Q For the same reasons that you refused on the first call?

A Isn't it also noted that I did identify myself the night of the fire?

Q To the telephone company?

A To the Telephone Company, no - to the Fire Chief. No, no I keep hearing about I did not want to identify myself. I don't hear that I did identify myself.

ANZALONE

Q So the record is straight we're on turning in of the alarm, after that we're not.... The second call Mr. Anzalone, I presume that you were very much concerned?

A Annoyed and concerned.

Q You know at that time did you not that the Glasser Family occupied the other section of that dwelling?

A That's right.

Q After you called the second time what did you then do?

A I ran out front door towards the Glassers' home.

Q What?

A Toward Glassers' home.

Q Anybody out in the street at that time?

A They were coming out the door. I believe it was the father and the son. Well, I think the whole three were out there but the first one I believe I saw was the father.

Q Did you see Mr. Vivelo at that particular moment?

A No, I didn't see anyone.

Q Did you see Mr. Vivelo out in the street at any time?

A Let's say if anyone was on the street at that

ANZALONE

Q Isn't it a fact at that time they were discussing the fact that the black family, referring to the Charles Family, were actually moving in?

A That could have been the discussion but to say today it was a fact, I'm not prepared to say that.

Q Well, I'm referring to the statement which you gave the Fire Marshal in which you said and I'm reading from your statement now, that you returned home about 9 PM. That there were groups of neighbors talking out on the sidewalk. Does that refresh your recollection?

A They're always outside.

Q And you did say this is not unusual?

A It is not.

Q Did you indicate to the Fire Marshal and is it not a fact that there was some talk about the black family moving in?

A Today I would say there was talk. To the extent of the conversation regarding the move on the black family I don't know.

Q Did you tell the Fire Marshal that they did talk about the black family moving in?

A I might have told him that, yes.

Q You told that to the Fire Marshal?

A I didn't write that statement. I didn't

even read that statement.

Q I understand that but you were questioned by the Fire Marshal?

A Yes, I was.

Q I'm referring to the notes that were made to refresh your recollection?

A I'm not disagreeing with the statement. I'm saying there is a very good possibility, which is factual, that we did discuss it but I don't recall today exactly what was discussed.

Q Well, do you recall now that the black family was seen carrying into the house several boxes earlier that day? Did you make that statement to the Fire Marshal?

A I made the statement we knew they had carried boxes into the house, whether that particular day or two or three days prior to that day, I don't know.

Q Did you indicate to the Fire Marshal and is it not a fact that you remained with the group for approximately two hours?

A I could have, yes. I could have been outside two hours or better. I don't believe two hours in a row. I might have gone in and come out. I could have been out there two hours, yes.

Q And during this period was there some discussion

ANZALONE

about the black family moving in?

A I would say yes.

Q Do you recall some of the neighbors who participated in that conversation?

A Today no. If you read off the names, I'd have to agree with you. I don't know.

Q Well, Mr. Vivelo wasn't there, was he?

A No, he was working 4 to 12.

Q Was his wife there?

A With me, no. I believe on that particular night there were two groups, one group of women and one group of men. I don't know if she walked over at any time and talked to us and went back to her group.

Q Was she outside?

A I think possibly she was. I wouldn't swear. There were women outside I believe, including my wife.

Q In other words you suggest women...

A We don't suggest that we talk about certain things. They talk about certain things.

Q It would be your recollection that Mrs. Vivelo was in one of the groups?

A I would say she was but I don't really know. I don't recall.

Q Do you know who set the fire?

ANZALONE

A Do I know who set the fire? No I don't believe anybody did but that's my own opinion.

Q You think it was a spontaneous comoustion?

A Might have been. Until I hear otherwise, I don't know what it was.

Q Have you talked to Mr. Vivelo about the case?

A Oh we've talked sure. I mean, you know. I have talked to my family about the case. I have talked to associates in my office about the case. I have talked to many people in the case.

Q Did you learn or were you aware of the fact that this Grand Jury refused to give Patrolman Vivelo immunity?

A Yes.

Q And how did you learn that?

A Either through my wife, or himself or his wife.

Q Might you not have learned it from Mr. Vivelo?

A Oh yes I might have.

Q So there would certainly be some discussion between you and Mr. Vivelo, between the two of you?

A If you want me to convey my discussion - I could turn around and say I think their crazy - that may be part of my discussion.

Q Did he ever discuss with you the fact that because

he didn't get immunity he was a possible target of this investigation?

A A target or suspect?

Q A suspect?

A Sure I imagine I conveyed the same wording to him as you did to me regarding the signing of a waiver.

Q Did Vivelo ever indicate to you that he felt that he was suspect?

A That he was a suspect, in those words - I don't know.

Q Not in those precise words?

A By stating he had to sign a waiver it is obvious he's suspec and obvious I was.

Q Did Vivelo ever indicate to you that he was a suspect?

A I don't recall.

Q Might he have?

A He might have.

Q Did you ever discuss with him the entire case?

A The entire case?

Q Of the fact that both of you were suspects?

A Yes, we discussed it.

Q When did you last discuss it?

A Oh gee, quite a number of months ago.

ANZALONE

Q What was said?

A You really want to know what was said?

Q Yes?

A I don't remember word for word. My comments were the house next door could be burning down the next time I'd never call. I'd never call anyone. If I see an old lady beat up on the corner, I'd leave her there to..

Q You feel...

A I feel I'm being harrassed.

Q Did Vivelo also feel he was being harrassed?

A I guess to a certain degree, yes. More so me. I'm being called down all the time - he's not. I don't have time to come down here.

Q We understand that. We're well aware of the fact.

A The extent of the conversation was that if anything would happen again I'd close my eyes because I think it's ridiculous. #1 if you call in a fire that you become a prime suspect. 2. because you have someone over for coffee, whatever the reason, he's considered a suspect. I think it's ridiculous. You want to know my conversation that's it. It's ridiculous.

Q Did he agree it was ridiculous?

A I think so.

ANZALONE

Q Did he indicate the Police Department was considering the case?

A No, we don't talk job.

Q Never indicated to you they're considering the fact that he, a public officer, had refused to waive immunity in an investigation by the Grand Jury? He never discussed that with you?

A To the best of my knowledge, no - nothing pertaining to the Police Department.

Q What was Vivelo's attitude about the black family moving in when you spoke about it generally?

A Generally speaking, I don't think anybody's attitude on that particular street was any different. If the family was to buy legitimately buy the house and move in, I don't think anything would have been said but being that the real estate, whoever may be, passed around information and the previous owners that they were going to get even with the Italians, what have you on that block, going to put a negro family on the block, I think this type of talk just made people in general heated.

Q If you know is 351 Milton Avenue - has that been repaired?

A I see new windows on it.

Q No family has moved in?

ANZALONE

A Not yet, no.

Q Is there talk going around about who may be moving in? Is there talk about another black family moving in?

A No.

Q So I understand Mr. Anzalone you have nothing to do with the fire, is that correct?

A Oh certainly.

Q Although the feeling of the neighborhood toward the black family was unkind and hostile, you never participated in any discussions with anyone in which retaliation or means or methods of discouraging the black family were ever discussed?

A Did I participate in conversations concerning that, I would say no I never did but there probably was conversations. Talk is cheap, excuse that expression.

Q Some of your neighbors Mr. Anzalone, after the fire, visited the real estate office of the broker involved. Are you aware of the fact?

A I'm aware of the fact that neighbors did visit.

Q Did you participate?

A No sir.

Q Did Mr. Vivelo, if you know.

A I don't know, but I doubt it.

ANZALONE

Q Any questions? Anything else you want to tell us? I just would like to ask you - don't you as a citizen fell that a Grand Jury has an obligation to conduct an investigation into the burning of a dwelling?

A I certainly do. I do not disagree with that at all. I disagree with the manner in which it is being conducted.

Q With the treatment you have received?

A I think five time up here, two for my wife and three myself - I have an important position at my job.

Q Any questions?

JUROR: Just to get his feelings. We all might be in the same position but if we see fire in a house next door at the moment the fire occurs we refust to give our name because we think we'd be suspect - don't you immediately think this fire was caused by somebody?

A. I didn't say I didn't think it might not be caused by somebody. I didn't make that statement. Do you give your name if you press a alarm box? Do you leave your name at an alarm box?

ANZALONE

JUROR: No I'd stand and wait for the engines to arrive.

A. Are you required to give your name?

JUROR: If I saw fire up the block I don't phone in - I stay and wait for the engine - there is a house on fire up the block.

A. Why is it questionable I would not give my name?

JUROR: So the engines could find out.

A. I think you heard my taped conversations. Was my description of the neighborhood clear enough? I felt I did not have to give my name. I was not required to give my name. No way I was going to give my name. The only reason for my giving my nar to the fire chief afterwards was I was so aggravated they did not show up the first time. That is the onl reason I gave my name/

Q Any other questiony by any of the Grand Juror?

JUROR: Was that the first time th

ANZALONE

Mr. Vivelo had forgotten his key and come to your house to call his wife?

A. First time that I can recall. I mean to my particular house, yes.

JUROR: He has a dog hasn't he?

A. Yes.

JUROR: Did he indicate that he rang the doorbell to try to get into his house?

A. I don't know if he rang the bell or knocked on the door or just assumed because the lights were out that she was asleep.

JUROR: Seems to me ringing the bell would alarm the dog and he'd probably bark would be sufficient to wake up somebody in the house.' to my mind.

A. I can quote incident in the summer months of last year where Mr. Vivelo, myself and two others were going on a fishing trip at four o'clock. We could not wake him up

ANZALONE

with the bell or the phone or knocking on windows. I don't know his wife must be a very heavy sleeper. Four o'clock we could not get him up. We asked the patrolman on that particular block to assist us in getting him up so he could participate.

Q At any time during coffee, did he leave the house?

A No. He left the house and he went home.

MR. FOREMAN: Is there anything that you can suggest? You remarked that you didn't like the way the investigation was being conducted as far as you were concerned Anything that you could tell us or advise us what we should do to investigate further? The reason I assume you would be called several times, you were on the scene at that particular time and you testified yourself no one else was around.

A. Right and I'm considered a prime suspect for that.

MR. FOREMAN: No, no.

A. I was asked to sign a waiver on two occasions here - that consider me a prime suspect wouldn't it'

JUROR: What advice would you give u

ANZALONE

to continue the investigation? We feel it's a suspicious fire.

A. I feel it is too probably but I'm not involved with the city. I don't know what kind of evidence you have. If you have evidence you should pursue it further. That's my only comment but to call me three times and twice ask me to sign a waiver - you know I'm not going to sig

Q You don't know how many times other people are called?

A No. I'm concerned with myself and my wife.

JUROR: A group of, I think women, harrassed the former owners of that house after they moved away. Were you aware of that/

A. That they harrassed the former owner? Harrassed in what way?

JUROR: The house they moved to after they left Milton Avenue?

A. Am I aware of that? Yes I am aware of it. I believe my wife was one of them. I'm not sure.

ANZALONE

JUROR: Did Mr. Vivelo have a dog?

A. Yes he has a dog.

JUROR: Did you see the dog the night of the fire?

A. Did I see the dog the night of the fire? I don't recall. No. I would say no.

JUROR: Later on, after the fire, when you were all at his house, did you discuss the fire then?

A. No. We discussed taking the people from the adjoining house to that particular house. We took those people off to his house besides Glasser in his house and I believe we all had coffee there.

Q All right, anything else you want to say?

A No.

MR. BRAISTED: Thank you very much.

(WITNESS EXCUSED.)

MR. BRAISTED: I'd like the record to show the Grand Jury voted to adjourn until May first.

GOVERNMENT EXHIBIT -10(a) 2751

GOVERNMENT EXHIBIT 4 2751

DETECTIVE RICHARD CORBETT,

[illegible] 2503, Richmond Burglary Larceny Squad, Now [illegible]

[illegible] was called as a witness [illegible]

behalf of the People, first being duly sworn and testified [illegible]

as follows:

Q [illegible] your name and shield?

A [illegible] Richard Corbett, [illegible].

[illegible] Burglary Squad.

Q [illegible]

[illegible] on the 3rd day [illegible]?

A Yes I have.

Q [illegible] was made [illegible]?

A Yes, I was.

Q [illegible] you realize [illegible]

[illegible]?

A I did.

Q [illegible] assist [illegible]

[illegible].

A I did.

Q You have produced an investigator and I [illegible] the investigation is still continuing, [illegible]?

A That's correct.

Q [illegible] you have occasion to interview [illegible]?

COBBUN

A Yes, I did.

Q [illegible] you tell us the date and time of day

[illegible]

A I [illegible] May 2, 1972.

Q [illegible]

[illegible]

[illegible], is that correct?

[illegible].

Q He was not a member of that group?

[illegible], he was not.

Q [illegible]?

A He was not. He was [illegible] of the police

Q [illegible]

[illegible].

Q [illegible]

A It is called [illegible]. It is [illegible]

[illegible].

Q [illegible] you are able to [illegible]

[illegible]

[illegible].

COURT

Q I'd ask you to use the paper to refresh your recollection as to what you read from it. Do you understand?

A Yes sir.

Q And then after you refresh, with that aid, your recollection, tell us what you know. Okay?

A Yes sir. I was working that day on the 4th of April on the 8:00 to 4:00 shift. I was working that day on the time of the fire he worked 8:00 to 4:00 midnight. He's a patrolman in the 60th Precinct in Brooklyn. He arrived home at approximately 12:30 AM on the 22nd of April. He went to the door of his house and realized he did not have his keys for the house. He knew the [illegible] might be at [illegible] across the street at Mr. Amalfino's house at the Amalfino's was [illegible]. He went to the house. He dialed the number on the telephone, called her to open the door.

[illegible]

[illegible]. The door was open. He went into his house and took his dog out for a walk. He took the dog to the corner of his house and let the dog out of the house. The dog stayed out a few minutes and he went back into his house, washed [illegible] which was a shower on the 2nd floor and then he went to bed.

CORBETT

Q [illegible]

A Yes sir.

Q Could you fix the approximate time? You indicated that about 12:30 he returned from his tour of [illegible]?

A [illegible]

Q [illegible]

A Yes.

Q [illegible]

A [illegible]

Q [illegible]

A Yes I did.

Q Could you tell us the date, approximate [illegible] and where it could be found in the [illegible]?

A I do not have it. Approximately the 4th or 5th of September and she stated he was that at the time of the incident and she stated he was in bed but could not sleep. That is

1 [illegible]

2 A Right.

3 [illegible]

4 [illegible]

5 A Yes, I did.

6 Q [illegible]

7 A [illegible]

8 [illegible]

9 [illegible]

10 [illegible]

11 [illegible]

12 [illegible]

13 [illegible]

14 [illegible]

15 [illegible]

16 [illegible]

17 [illegible]

18 [illegible]

19 [illegible]

20 [illegible]

21 [illegible]

22 [illegible]

23 [illegible]

24 [illegible]

25 [illegible]

COMEAU

[illegible] on Milton Avenue. He didn't know the address. And the operator asked him to identify himself and where exactly the fire was and he refused to identify himself [illegible] and he. [illegible] he would [illegible] and [illegible] he knew a number of the ways [illegible] and he. He went back into the house and [illegible] and [illegible] and [illegible] and he said, he stated he did not want to become involved. [illegible] the name that calls him [illegible] and [illegible] with out the time. He at that date he said he went [illegible] at that time and saw a [illegible] address [illegible] and [illegible] and [illegible] and I would I interview him and [illegible] and he refused. He stated he did not want his [illegible] to become involved.

Q All right. I will now ask you to look at this

A 163

PD 313-031 (Rev. 10-71) (FORMERLY P.D. 313)

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Additional Copies Required for: 5

Complaint Det. No.

Date of This Report	Referred To	24.*	STATUS OF CASE	25. CCD No.	26. Pct.	27. Complaint No.	Year
5/2/72	Burg/Larceny		☒ Active ☐ Closed ☐ Unfounded	262904	122	2470	72

INSTRUCTIONS: Whenever a case is unfounded or a crime classification is changed, All shaded captions MUST be completed.

13. Det. Squad Assigned To	14.*	15.*	16.*	17.*	Classification Changed To	Present Classification

29. Fcy	30.*	31.*			50. Property Stolen/ ☐ Lost ☐ Stolen	51. Value of Property	52. Value of Property Recovered
					Value Each Article Not Fully Described		
41.*					Value Burglar's Tools (Burg. Only) ☐ For Crime Alleged ☐ For Other Acts		
					Currency		
					Negotiable Instruments		
Copy of this report forwarded to Corr. Unit for Communication ☐ YES ☐ NO		Alarm Number			Jewelry		
					Furs		
					Clothing		
					Electrical Appliances		
					Miscellaneous		

DETAILS AS REPORTED BY FOLLOW UP INVESTIGATING OFFICER

Subject: INVESTIG. TION SUSPICIOUS FIRE 351 MILTON AVE.

Interviewed one Anthony Vivelo-356 Milton Ave.NYCPatrolman-60 Pct.MW 28yrs. at 0910 at 122 Sqd. who states the below.

On 4/21/72 I worked a 4 to 12 Mid. tour in 60 Pct.drove home and arrived at about 1225 -1230 AM 4/22/72, I forgot my keys to my house, rang my doorbell but my wife diden't answer, then walked across street to Albert Anzalone house 349 Milton Ave. used his telephone to call my wife, I had a cup of coffie with Al and his wife, stayed there about 5 or 10 minutes the I went home , I don't know what time it was , I let the dog out the back door, I walked to front of my house with him diden't see anyone on street so I let him run loose walked to rear of my house and entered by back door , 2 or 3 minutes later the dog returned, I let him in the back door, this was about 1 AM 4/22/72 and went to bed.

My wife woke me up and said the fire engins are outside, I don't know what time it was, we went outside ,everyone (neighboors) were outside watching fire, after

(OVER)

USE REVERSE SIDE IF MORE SPACE IS NEEDED (Carbon must be inverted)

DESCRIPTION OF LOST OR STOLEN PROPERTY -- DO NOT ENTER PROPERTY PREVIOUSLY REPORTED See Appendix G of R. & P. | Property Clerk Voucher No.

ARTICLE (Name Only)	QUANTITY	VALUE	DESCRIPTION (Include Serial Numbers Where Possible)

DESCRIPTIONS OF PERSONS WANTED, PERSONS ARRESTED AND ARREST DISPOSITIONS-See Appendix G of R. & P.

GOVERNMENT EXHIBIT 3500-10(j) SCR751

GOVERNMENT EXHIBIT 4(a) SCR751

Investigating Officer's Name (Print) Rank Det. Shield No. 2263 Command	Investigating Officer's Signature	Commanding Officer's Signature
Richard Corbett		Lt.

ARREST AND CRIME CODING SECTION

-- after the fire was out the Madolene family came into house and had a cup of coffee, I went to bed.

I have no knowledge of fire or who set it.
I have no knowledge of any organization on this block.
I have no knowledge of prior damage to house.
I never went to Real Estate Office and no one ever approched me about it.
I have no knowledge of blockbusting only what I read in the papers.
I do not know the Charles family.
I don't suspect anyone and have no knowledge of incidents.
No one told me to keep my mouth shut or anything else regarding this incid

A 165

COMPLAINT FOLLOW-UP

(PD 313-081 (Rev. 10-71) (FORMERLY [illegible])

*FOR OFFICE USE ONLY (Do Not Fold or Mutilate)

Additional Copies Required for: 12

Complaint No. Prec.

Date of this Report	Returned to	64.*	STATUS OF CASE	D.D. C.C.D. No.	19. Pct.	22. Complaint No.	Year
4/27/72	Purs. Lr. Sqd.		☒ Active ☐ Closed ☐ Unfounded	200004	122	2470	72

INSTRUCTIONS: Whenever a case is unfounded or a crime classification is changed, All shaded captions MUST be completed.

1. Day, Date and Hour of Occurrence	14.*	15.*	16.*	17.*	Classification Changed to	Property Clerk Voucher

27.	36.*	37.*			50. Kind of Property ☐ Lost ☐ Stolen	51. Value of Property	52. Value of Recovered
					1. Cash Taken by Perpetrator		
41.*	42. No. of Occ.	43. Premises			2. Cash Recovered or Other Articles Taken by Perp. Not Classified		
					3. Jewelry		
					4. Furs		
					5. Cars		
					6. Clothing		
					7. Firearms		
					8. Miscellaneous		

Copy of this report forwarded to Com. Unit for Communication ☐ YES ☐ NO

Alarm Number

DETAILS AS REPORTED BY FOLLOW UP INVESTIGATING OFFICER

Subject: INVESTIGATION SUSPICIOUS FIRE 381 MILTON AVE. S.I.

On above datent about 1210hrs at 110 Church St. Rm. Fire Marshalls Offs. Supervisor John Corey & Marshall Anthony Romero # 70 and interviewed below subject one Albert Angelone 380 Milton Ave. S.I. , who lives at residence with wife Mary & 3 children 2 girls 6&8yrs. boy 4yrs.

At about 1:30 AM 4/27/72 while shoving in bathroom he smelled smoke, finished shoving and went down stairs to put bikes into shed in rear yard, upon going into rear yard it was full of smoke, he ran into house and dialed Tel-Operator & told her of fire but would not reveal his identity, I waited in house and the ran into rear yard again and observed a glow thru boarded up window and heard fire crackling, I came back into house,my wife dialed Operator but I spoke to operator told her of fire and again refused to identify myself, I then went outside left my family inside and the first persons I observed was the Giesers Family. At this time 1;30 AM only my family was in the house.

(OVER)

USE REVERSE SIDE IF MORE SPACE IS NEEDED (Carbon must be inserted)

DESCRIPTION OF LOST OR STOLEN PROPERTY — DO NOT ENTER PROPERTY PREVIOUSLY REPORTED See Appendix G of R. & P. | Property Clerk Voucher No.

ARTICLE (Name Only)	QUANTITY	VALUE	DESCRIPTION (Include Serial Numbers Where Possible)

DESCRIPTIONS OF PERSONS WANTED, PERSONS ARRESTED AND ARREST DISPOSITIONS See Appendix G of R. & P.

Investigating Officer's Name (Typed) Rank Det. Shield No. Co. Command D.I.	Investigating Officer's Signature	Commanding Officer's Signature
Richard Corbett	[signature]	Lt. [illegible]

ARREST AND CRIME CODING SECTION

(CONTINUED)

at 1:30 to [illegible] Sept. 4/ 3/72 Anthony Vivi[illegible] lives across st.) 356 Hilton Ave.(a DYS [illegible]oman) for[illegible] his key and called his wife from my telephone, had a cup of coffie, stayed about 10 minutes and then left for his house, about 20 minutes after Anthony Vivillo left I went upstairs to shave & smelled smoke.

- did not identify myself on telephone calls, I didntt think it was necessary as I did not want to be involved., It was 5 to 10 min. between calls

I have no keys to 356 Hilton Ave.

I have no knowledge or information about the fire, or the people who went to real estate office or who canvassed the area.

My wife was one of the women who went to Oak Ave.

I work for Miss American Corp. 100 Hall St. Wm.Brockenty's House for past 10 yrs. employed as the Dresser.

A 167

Date of this Report	Referred to	04.	STATUS OF CASE	10. C No.	19. Pct.	22. Complaint No.	Year
7/4/72	Burg. Inv. Sqd.		☒ Active ☐ Closed ☐ Unfounded	262904	122	2470	72

INSTRUCTIONS: Whenever a case is unfounded or a crime classification is changed, ALL shaded captions MUST be completed.

11.	14. *	15. *	16. *	17. *	Classification Change To	Previous Classification

35.	36. *	37. *		50. Type of Property ☐ Lost ☐ Stolen	51. Value of Property	52. Value of Property Recovered
				1. Cash		
41. *	2	Amt.		2. Property Recovered for Other Jur. 3. Other Other Auth.		
				4. Currency		
				5. Jewelry		
Copy of this report forwarded to Corr. Unit for Communication ☐ YES ☐ NO	Alarm Number			6. Furs		
				7. Clothing		
				8. Equipment		
				9. Miscellaneous		

DETAILS AS REPORTED BY FOLLOW UP INVESTIGATING OFFICER

Subject: SUSPICIOUS FIRE 351 HILTON AVE. 4/22/72

On this date 7/4/72 the assigned reinterviewed one Albert Anzalone of 343 Hilton Ave.in an effort to interview his daughter Laura Anzalone Fd 9yrs. and above subject states he will not permit the assigned to interview his children.

USE REVERSE SIDE IF MORE SPACE IS NEEDED (Carbon must be inverted)

DESCRIPTION OF LOST OR STOLEN PROPERTY — DO NOT ENTER PROPERTY PREVIOUSLY REPORTED See Appendix G of R. & P. | Property Clerk Voucher No.

ARTICLE (Name Only)	QUANTITY	VALUE	DESCRIPTION (Include Serial Numbers Where Possible)

DESCRIPTIONS OF PERSONS WANTED, PERSONS ARRESTED AND ARREST DISPOSITIONS See Appendix G of R. & P.

Investigating Officer's Name (Type)	Investigating Officer's Signature	Commanding Officer's Signature
Det. Shield No. 2507 Richard Corbett		Lt. [illegible] Rich.

ARSON AND CRIME CONTROL SECTION

A T T O R N E Y R O S E N B E R G, Fire Marshal,
Shield Number 70, New York City Fire Department,
[illegible] witness on behalf of the People,
first duly sworn and testified as follows:

Q [illegible]

A [illegible]

Q [illegible]

A Yes I have.

Q And did you [illegible]

[illegible]

And that included the interview of

[illegible]

Fire Marshal Rosenberg.

Q Did you interview Mrs. Almont A[illegible]?

A She was interviewed by Detective Corbett,
A[illegible]-M.

ROMERO

Q Did you interview Mr. Albert Anzalone?

A That's right.

Q Did you prepare a memorandum of that interview?

A Yes, I have it right here.

Q You may refer to your memorandum to refresh your recollection.

A I interviewed him at his office. I had him come into my office.

Q Who else was present?

A No one was present but the two of us.

Q It is the practice of this office and you likewise to keep memoranda of interviews that you conduct, I suggest you may refresh your recollection from it.

A After I left the office, I went back to my office and I typed up this memorandum. I had asked him how did you first learn about the shooting and he told me that he was in the bathroom shaving at 2 o'clock in the morning. Here he was shaving in the bathroom at 2 A.M. and that he smelled smoke, looked out his rear window and then went downstairs. That he saw

1 HOLLAND
2 that the yard was full of smoke. He also stated that
3 when he was in there, he was told by one of the children's
4 mother that she had to the rear yard, and that's when
5 he noticed that the rear yards were full of smoke. He
6 [illegible] the house and made a phone call to
7 [illegible] and I learned later that he didn't
8 [illegible]. At that point I [illegible]
9 [illegible] to the rear yard that he could
10 [illegible] the fire. And I [illegible]
11 [illegible] address at which he saw the
12 [illegible], he then said that he did not want to give a signed
13 [illegible] call, that he saw the fire [illegible]
14 did not respond quickly, he did make a second call and the
15 wife made a second call.
16 Q Did he go outside again?
17 A He did go outside again when he saw flames.
18 The first time he saw only a fire. I asked him [illegible]
19 to define the exact direction that he was [illegible]
20 and he said no. The second time he saw flames coming
21 from the rear of the fire building.
22 Q Who was 351?
23 A [illegible] Atkins. I asked him did he go
24 into the fire department where the fire was at this point?"
25 He said "I didn't want to [illegible]." He did

tell us later on that when the Fire Department did

[illegible], he did go to the fire patrol and [illegible]

that he had with the mill. We learned that

[illegible], after speaking to the Fire Department

[illegible] and the Telephone Company that the call was

made from his home and when we confronted him with

[illegible]

[illegible], did [illegible]

A [illegible]

He said that earlier that day he received

[illegible], but by the time [illegible]

returned home about 2PM and saw [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Before you get to that, did a call go

[illegible] to remained with the group outside?

A He remained with the group approximately

ten hours.

Q [illegible] outside the fire?

ROMIC

A Not the fire. The last that I [illegible] was [illegible].

Q But he said that he stayed with that [illegible] his own house?

A Right and then he went to [illegible]. He went [illegible] 12:30 he left a friend [illegible] across the street, Anthony Virdo, [illegible] and called [illegible]. [illegible] to hear from [illegible]. [illegible] and he went to [illegible] to his house [illegible] to open [illegible], but a couple of [illegible] Anthony [illegible], he was [illegible] to stay and [illegible]. That's about it.

Q [illegible]

[illegible]

A [illegible] that he heard [illegible] and he [illegible] to the basement of this building and he [illegible] that there [illegible] and he also learned that when

ROMERO

he saw the Police arrive on the block and the Police made a search of the building. He learned that a black [illegible] who [illegible] from one of his neighbors, Maxine [illegible] who lives across the street. He denied having [illegible] the home or entering the home.

Q Did he make any statements about his [illegible] who was living on that block was [illegible] the fire?

A Yes, he did. He stated that [illegible] was responsible for the fire did not live on the block.

Q Did he also indicate that his wife had [illegible] with the others to visit the Caldwell's [illegible] Ave.?

A That's what he did. Both [illegible] addresses were Mr. Caldwell lives.

Q You say you [illegible]?

A Yes.

Q [illegible]?

A That's.

Q And [illegible]? Is that right?

A That's correct.

Q Did he indicate that he had any idea who [illegible] fire?

ROBERTO

A He did not say anything to me. [illegible] did not [illegible]. At that point we didn't know who had called the [illegible] somebody from either [illegible] with the [illegible], I [illegible] was [illegible] to give a [illegible] and [illegible]. I [illegible] and [illegible].

Q So I directed to you "the first time I saw [illegible]" is that correct?

A That's [illegible].

Q And I directed him to [illegible] first?

A [illegible].

Q [illegible] did you [illegible]?

A Right.

Q He also testified that [illegible]?

A [illegible].

Q At that point he saw [illegible]?

A [illegible].

ROMERO

Q Did he indicate that he knew it was coming from 351?

A Yes.

Q [illegible]

[illegible]

A That's correct.

[illegible]

[illegible]

to the second floor to 351 [illegible]

A [illegible] knew but...

Q [illegible] was 2:32.

Q [illegible] where it is?

[illegible] 351? I [illegible]

Q Yes, a few questions?

[illegible]

[illegible]

[illegible]

was also [illegible]

[illegible]

[illegible]

[illegible]

A. The first [illegible] the floor?

JUROR: Did I say it?

[illegible] who set the fire?

JUROR: The first statement was made about the children in the papers and by Charles when he was interviewed that the children in the block knew who set the fi[illegible] and then we called Mr. Smith and he stated that the fire department knew who set the fi[illegible]

A. [illegible]

[illegible]

A. No.

[illegible] any other questions?

JUROR: [illegible] he went out and saved time and s[illegible] or any question asked why he didn't go down and try to rouse the Glassers who were by next door to his parents by?

ROMERO

A. Right, his house is approximately 50 to 70 feet away from his door to 351 Milton Ave - it is a white [illegible]. [illegible] was going to what he did [illegible] the [illegible]. He just said he didn't want to get involved.

[illegible] other questions?

JUDGE: Why did catch the time in the recordings and telephone - he said he was in his bedroom [illegible] and he [illegible]?

A. Right.

QUINN: [illegible]

A. He stated that [illegible] 2 PM he [illegible] did not think much about it. That he then went outside to ran his child's bike in the shed and when he went to the rear yard smoke was heavier. At this point I

Arrizo

asked hi. "Could you see where
the fire was coming from?" He sa
no but that he had run back in
the house and called the fire
department and he told them
that there was a fire on Miller
Avenue [illegible]
he had called [illegible]
at this point. How shortly
after we learned that, he [illegible]
a second call or his wife made
the second call and she did n't
want to identify herself either
[illegible], and I don't
on the phone, he ran outside to
the rear yard and saw the flames
coming from the rear of this
building. Now by the time he
got back the Fire Department
dispatcher was asking for the
address of the fire and that she
did, in turn, from our investigation
that she had [illegible]
and asked why are they calling

ROMERO

and he [illegible].

JUROR: [illegible] he said he went up to shave about 12:45?

A. He stated first indication was while shaving in the second floor bathroom.

JUROR: I [illegible] - Well, both his [illegible] he went [illegible].

A. He said his friend, Anthony [illegible] and his door [illegible] until approximately 12:45. That he then went up to shave at 1:00AM; He and his wife, his wife was awake in bed and he went to shave at approximately 1:[illegible].

JUROR: [illegible] made that phone call?

A. Yes, the same [illegible].

MR. [illegible]: [illegible].

(WHEREUPON [illegible].)

A 180

P. I. 14

No. .....

BUREAU OF FIRE INVESTIGATION

SUPPLEMENTARY REPORT

Date..... 19 .....

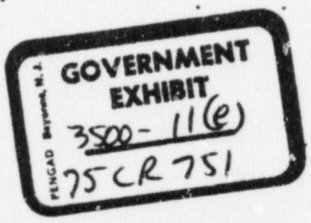
SUBJECT: CONTINUED INVESTIGATION

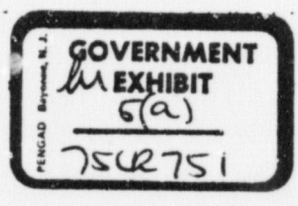
LOCATION OF FIRE: 343 MILTON AVE., S.I.

DATE OF FIRE: April 2, 1972 TIME: 0214 hours

ALBERT ANZALONE, occupant 343 Milton Ave., S.I. 4 years, with wife Mary 28, and 3 children - Laurie 9, Paul 8, Albert 4. Employed at Swiss American Brokerage Corp., Treasurer of Corp.; Stated that the first indication of a fire in the area was while shaving in his 2nd floor bathroom at approximately 2 A.M.; that he smelled smoke but did not think much about it; that he then went outside to put his children's bicycle in the shed in his rear yard; that the rear yard was full of smoke; that he could not see what was on fire; that he ran to the house and dialed "0" to call the Fire Dept.; that he told them that there was smoke in the area; that they asked him where was the fire, and he told them that the fire was on Milton Ave. off Tysens Lane; that he refused to identify himself because he did not want to get involved; that he then ran outside again and saw a glow coming from the rear yard next to the Glasers; that he ran back to the house; that his wife was on the phone; that the fire dept. was asking her for their location; that he did take the phone from her - that he did not want to identify himself. He also stated to this investigator that usually the person that calls the alarm is the person who started the fire; that he then hung up the phone; that he ran outside and saw the Glaser family outside; that he then heard sirens and saw the fire dept. arrived; that other neighbors came outside; that earlier that day he arrived from work at approximately 7 P.M.; that he took his family out to dinner; that they returned home at about 9 P.M.; that there were groups of neighbors talking out on the sidewalk; that this is not unusual; that he did not get into the conversation; that they talked about many things; that they did talk about the Black family moving in; that they told him that the Black Family

Fire Marshal





H

A 181

F.I. 14

No. .....

BUREAU OF FIRE INVESTIGATION

SUPPLEMENTARY REPORT

- Page 2 - Date.....19 .....

SUBJECT: .....

LOCATION OF FIRE: 351 Hilton Ave., S.I.

DATE OF FIRE: .....TIME: .....

was seen carrying into the house several hours earlier that day; that he remained with the group for approximately 2 hours; he then went into his house; that his friend Anthony Vivello who lives across the street did ring his door bell at about 12:30 that night prior to the fire; that he wanted to use his phone to call his wife; that Anthony told him that he had forgotten his house keys and wanted to wake up his wife so that she would open the door; that he had a cup of coffee and left at about 12:15, 15 minutes later; that his wife was awake in bed; that he went to shave at approximately 1:30 AM. He further stated that he learned about the broken window incident in the vacant house when he saw the holes; that he was not really concerned; that he learned about the vandalism when the police arrived on the block; that he was not concerned; that he did not go to any real estate office with his neighbors; that he does not belong to any group or civic association; that his wife Mary did go with other women to visit Gebhardt's neighbors on Oak Ave.; that he learned that a Black family were moving on the block from Rauland Marine Neiman. That he does not have keys for the house at 351 Hilton Ave.; that he does not believe that whoever is responsible for the fire lives on the block; that he has no knowledge of who might have set the fire. That he has not received any threats from anyone.

ANTHONY VIVELLO 28, occupant 3 years 355 Hilton Ave., S.I., wife, Dianne, employed at NYC Police Dept., 60th Pct. 3 years (987-2422) stated that he first learned about the fire when his wife woke him up; that the last time he was outside was between 1:15 and 1:30 AM walking his dog; that he did not see anyone or anything unusual. *Fire Marshal*

H

A 182

P.I. 14

No. Page 3

BUREAU OF FIRE INVESTIGATION

SUPPLEMENTARY REPORT

Date.....19.....

SUBJECT: .....

LOCATION OF FIRE: 351 Hilton Ave., S. I.

DATE OF FIRE: .....TIME: .....

that he did not know anything about the fire.

NOTE: (The following is the statement taken by Det. Richard Corbett, #2503, 122 Sod by Anthony Vivello.)

ANTHONY VIVELLO stated that he worked the 4 - 12 PM tour; that he arrived home at about 12:25 -12:30 A.M.; that he rang his door bell because he forgot his keys - no answer that he then went to his friend's house, A. Anzalone, to call his wife on the phone; that he had a cup of coffee and left approximately 5 - 10 minutes later; that after he was home approximately 5 - 10 minutes, he walked his dog out the rear door, and around to the front of the house; that he saw no one and unleashed his dog; that he left his dog outside and walked back into his house via the rear door; that approximately 3 minutes later his dog returned; that he then went to bed at about 1 AM and fell asleep; that he was awakened by his wife and she told him that the Fire Dept. was outside; that he and his wife got up and went outside; that after the fire was out, Gerald Maddalone and his wife visited him and had a cup of coffee; that he left his wife and the Maddalones in the kitchen and he went to bed; that he had no knowledge of who was responsible for the vandalism or fire; that he never went to any meetings; that he knows only what he reads in the papers.

LMO CLASS2, 50, occupant 3 years, 319 Hilton Ave., S.I., wife, Pearl, son Robert, 21, 987-9414, stated that both he and his wife were asleep and were awakened by their son Robert; that Robert told them that there was a fire; that the house was filled with smoke;

Fire Marshal

H

A 183

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

: 75-CR-751

-against- :

ALBERT ANZALONE, ANTHONY VIVELO, NICOLAS LOMBARDI, ROBERT BARBIERI, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

May 19, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

MICHAEL MIELE
OFFICIAL COURT REPORTER

the first time he will stop it and then advise the jury it is being played a second time and then we can pick it up again.

THE COURT: All right.

THE CLERK: What about the original?

THE COURT: Just mark it with a marking pen. I will tell you why. They won't see the original.

MR. DE PETRIS: [illegible] your Honor.

At this time I would offer into evidence Government Exhibit 9, the tape itself. I would have that deemed marked in evidence.

I would ask that 9-A, the transcript, be received in evidence.

MR. AGULNICK: I have already put my objection on the record.

THE COURT: I will overrule those objections and they can be marked in evidence.

THE CLERK: Government Exhibits 9 and 9-A received in evidence.

(So marked.)

THE COURT: Now, who will be the witness -- the fire marshal?

MR. DE PETRIS: He is next but before he comes in to testify the defense counsel and Government counsel have reached a stipulation as to the grand jury

testimony in the perjury counts that they would come into evidence as set forth in the indictment with the reservation that if anyone wanted further relevant portions that could be done at a later time and I would propose to do that now since this testimony will directly relate to one of those counts.

I could read it tothe jury -- there is also a stipulation as to the nature of the investigation as set forth in the indictment, that is, that it was to investigate --

THE COURT: Have you agreed on what you are going to say?

MR. DE PETRIS: I am going to read exactly what is in the indictment. I think that was agreed upon.

I could read the entire thing myself, the questions and answers but I think it would be clearer to the jury if Mr. Savadel read the answers and I read the questions.

MR. AGULNICK: I object to that.

MR. Savadel has a prosecutorial interest in this case --

THE COURT: That is not your real objection. He is just too handsome.

MR. AGULNICK: I would be willing to read Mr. Anzalone's part.

THE COURT: Would you do that.

MR. DE PETRIS: If it is the voice inflection you are worried about the FBI is well trained to speak in a monotone voice.

THE COURT: I think it would be better if you read the whole thing yourself.

MR. DE PETRIS: Very well, your Honor.

(Continued next page.)

P:jk
pm R1

THE COURT: All right, are we ready to bring them in?

MR. DE PETRIS: Yes.

THE COURT: Bring them in.

(The jury is in the jury box.)

THE COURT: All right, Mr. De Petris.

MR. DE PETRIS: Shall I proceed, your Honor?

THE COURT: Yes.

MR. DE PETRIS: Your Honor, defense counsel and the Government have stipulated as to certain matters with respect to the grand jury testimony of the defendants in this case. I would propose to read that to the jury at this point in time.

First, Government and defense counsel stipulated that as set forth in paragraphs 2 and 3 of the perjury counts as follows:

"At all times material hereto, a grand jury of the United States duly empanelled and sworn in the United States District Court for the Eastern District of New York was conducting an investigation to determine whether there had been committed in the Eastern District of New York violations of the civil rights laws of the United States involving discrimination with respect to the rental and purchase by the Charles family of a

house located at 351 Milton Avenue, Staten Island, New York."

It goes on to say certain things were material to that investigation.

The Government and defense counsel have also stipulated that the testimony set forth in the indictment, counts 3 through 10, is a true and accurate transcript of the testimony as given by each defendant as set forth in these counts.

At this time, I would read to the jury the testimony set forth in each count of the perjury count of the indictment. These are the questions and answers with respect to count 3 of the indictment, the testimony of Nicholas Lombardi.

"Question: Were you ever involved in any act of vandalism against the premises at 351 Milton Avenue?

"Answer: No.

"Question: Specifically, did you ever shoot a CO-2 pellet or BB-type gun at or in the direction of the windows at 351 Milton Avenue?

"Answer: No.

"Question: Did you ever shoot at the front windows of 351 Milton Avenue and thereby break the pains of glass of those windows?

"Answer: No.

"Question: To the best of your recollection, did you go back to his house that night?

"Answer: No.

"Question: At about 1:20 or 1:30 that night, did you go walking from your house across the street to Mr. Anzalone's house for any reason whatsoever?

"Answer: I don't recall if I did.

"Question: I am directing your attention now, Mr. Vivelo, to the best of your recollection. I want the best of your recollectionas to what you did that night after you walked the dog.

"Answer; To the best of my recollection I did not go back to his house."

That would be all, your Honor.

MR. AGULNICK: May we have a brief side bar?

THE COURT: Yes.

(The following took place at side bar.)

MR. AGULNICK: I have an application. What I am doing is I am referring directly to Page 9. On Page 9 there is a long narrative type question by the United States Attorney in which he summarizes testimony before that grand jury.

Now, this is a question to Barbieri, so I can't object to the type of question or the way the question is phrased.

I believe I have standing now to ask the Court to admonish the jury that this long rambling narrative question is not evidence of anything in this case in regard to any of the defendants.

I am very much concerning that it is chock full of facts.

THE COURT: All right. Let me say --

MR. DE PETRIS: Yoru Honor, perhaps the easiest way would be to admonish the jury at this time that they can only use the testimony in any particular count only on the question of perjury as to that particular count and that particular defendant and not use it in any other way with respect to the first two counts of the indictment.

MR. FLAMHAFT: I think that is a fair statement.

THE COURT: Does he agree?

MR. FLAMHAFT: He doesn't want to talk to us.

MR. DE PETRIS: Who?

MR. FLAMHAFT: The Judge. Judge Crecca. Barbieri talks a whole lot and it's unfair for us to be contaminated by his testimony.

MR. DE PETRIS: I have suggested --

THE COURT: This is in lieu of what you said -

MR. DE PETRIS: Perhaps the best way to handle it is have the Judge admonish the jury at any time they

can only use the testimony in any particular count of the indictment only with respect to that particular count and only with respect to that particular defendant and not to use it in any other way. That would resolve it.

THE COURT: That would be the testimony in answers given, not questions put.

MR. AGULNICK: Then I would ask further, the questions posed by Mr. DiPetris in that grand jury are not evidence of anything in addition.

THE COURT: All right.

(Continued next page.)

(The following transpired in open court):

THE COURT: Members of the jury, in connection with the reading of the questions and answers you have just heard, I caution you that you are not to consider as evidence in this case anything that was in the form of questions or statements in questions. That is point one.

You are to consider only the answers that were given and then you are to consider those answers only with respect to the particular count out of which that material was read and the particular defendant named in that count, not against the defendants, generally.

Do you understand that?

Each defendant is entitled to your own separate consideration as regards the evidence in the case as against him.

MR. DE PETRIS: I am now ready to call the next witness.

THE COURT: Very well.

MR. DE PETRIS: The Government calls Mr. George Felton.

MR. AGULNICK: I made a suggestion about the admonition, if you want to follow it?

THE COURT: To the witness himself?

MR. AGULNICK: Yes, it was just a suggestions.

A 193

UNITED STATES GRAND JURY

EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA :

-v-

JOHN DOE :

- -X

United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

April 29, 1975
11:30 A.M.

APPEARANCES:

RONALD DE PETRIS, ESQ.

Assistant United States Attorney

WITNESS:

ROBERT BARBIERI

Nina J. Coden
Grand Jury Reporter

RALPH FINK & ASSOCIATES
Certified Stenotype Reporters
140 NASSAU STREET
NEW YORK, N. Y. 10038

REctor 2-5566

MR. DE PETRIS: Ladies and gentlemen, good morning.

We have here today Mr. Robert Barbieri to testify.

If you recall he claimed the Fifth Amendment last time he was here. We now have an Order of Use Immunity with respect to him. We also have coming this afternoon Mr. Vivelo and Mr. Anzalone, who also claimed the Fifth Amendment last time. We also have Use Immunity Orders from the District Judge with respect to them.

The effect of Use Immunity is that -- perhaps I will read from the statute.

Reading from 18 United States Code Section 6002: "Once the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self incrimination, but no testimony or other information compelled under the order or any information directly or indirectly derived from such testimony or any other information may be used against the witness in any criminal case except the prose-

cution of perjury, giving a full statement or otherwise failing to comply with the order."

I would just ask at this time -- I will leave the room, ask that the Grand Jury discuss this and vote as to whether or not you wish the Foreman to convey the Use Immunity Order to the witness.

THE FOREMAN: Mr. De Petris, will you please explain to this panel what this Use of Immunity entails?

MR. DE PETRIS: I will be glad to.

THE FOREMAN: Does it absolve this man who is given this use of so and so?

Does it absolve him from any -- does it take anything from his defense or does it increase his liability? Will you please explain that?

MR. DE PETRIS: The effect of the Use Immunity is in contrast to contractual.

If this was contractual he would not be able to be prosecuted whatsoever for any violation of law respecting relating to the transaction to which he has testified to. However this is Use Immunity which means he

still may be prosecuted in some civil rights violations provided that his testimony or any leads from his testimony are not used against him in any way, in any further criminal proceeding.

Except that if he commits perjury and the Grand Jury indicts him for that, his testimony may be used against him on a perjury prosecution. That includes giving a full statement.

THE FOREMAN: Any questions?

MR. DE PETRIS: Off the record.

(Discussion off the record.)

MR. DE PETRIS: On the record.

A JUROR: In other words, you say that anything he says would not be used against him in the court or to vote his bill?

We can use whatever he says in the way of an indictment vote?

Anything he says here we can use to vote a bill?

MR. DE PETRIS: I think the best way to answer your question, Mr. Grand Juror, is that we definitely cannot use any such testimony against him in any criminal proceeding before

the trial jury or before a trial judge.

Similarly, if the witness -- you should not use any testimony the witness gives against himself.

For example if Mr. Barbieri testifies under Use Immunity, you should not use his testimony against him when you consider and vote on a bill, an indictment alleging a civil rights violation. However you may consider the testimony of Barbieri against any other individual as to whom you are voting, as to whether or not to vote a true bill.

One other statement in that regard would be appropriate. If the Grand Jury decides whether or not to vote a perjury or false statement indictment, then you may use the testimony that the witness gives under Use Immunity in deciding whether or not you will vote up a perjury or false statement indictment.

As to the civil rights violation, you may not use his testimony in his regard.

(Whereupon, Mr. De Petris exited the room while the Grand Jury voted.)

MR. DE PETRIS: Has the Grand Jury voted

on this yet?

THE FOREMAN: Yes, the Grand Jury has voted twenty-one in favor of the issuance of the Use Immunity.

MR. DE PETRIS: That means the Grand Jury wishes to hear the testimony of these witnesses?

THE FOREMAN: That is right.

MR. DE PETRIS: Was there any dissenting vote?

THE FOREMAN: No, and everyone voted.

MR. DE PETRIS: I will now call Mr. Barbieri.

R O B E R T B A R B I E R I , called as a witness, having been first duly sworn by the Foreman of the Grand Jury, testified as follows:

BY MR. DE PETRIS:

Q Would you please state your name for the Grand Jury?

A Robert Barbieri.

Q Mr. Barbieri, you were last here on December 17, 1974 and you recall at that time declined to answer questions on the grounds that your answers might tend to incriminate yourself, you refused on the basis of the Fifth Amendment privilege against self incrimination to testify before this

UNITED STATES GRAND JURY

EASTERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

-v- 723-108

JOHN DOE :

- x

Unites States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

April 29, 1975
2:35 o'clock p.m.

APPEARANCES:

RONALD DePETRIS, Esq.
Assistant United States Attorney

WITNESS:

ALBERT ANZALONE

Nina J. Coden
Grand Jury Reporter

RALPH FINK & ASSOCIATES
Certified Stenotype Reporters
140 NASSAU STREET
NEW YORK, N. Y. 10038

REctor 2-3566

ALBERT ANZALONE, called as a witness, having first been duly sworn by the Foreman of the Grand Jury, testified as follows:

BY MR. DePETRIS:

Q Would you please state your name for the Grand Jury?

A Albert J. Anzalone.

Q Mr. Anzalone, you were last here on April 15, 1975. At that time you declined to answer questions on the grounds that your answers might tend to incriminate you.

You refused to testify on the basis of the Fifth Amendment privilege against self incrimination.

Do you recall that?

A Yes, sir.

MR. DePETRIS: At this time I would ask the Foreman to read the ordering paragraph of an order dated yesterday from the judge in this court.

THE FOREMAN: Mr. Witness, "Now therefore it is ordered pursuant to Title 18 United States Code Section 6002, 6003 that the individual Albert Anzalone give testimony which he refused to give on the basis of his privilege against self

incrimination as to all matters about which he may be interrogated for said Grand Jury.

"This order shall become effective as provided in Title 18 United States Code, Section 6002."

BY MR. DePETRIS:

Q Have you had an opportunity to see the copy of this order which I have given to your attorney?

A No, sir.

Q Would you care to -- have you had an opportunity to discuss use immunity with your attorney?

A Yes.

Q Is there anything further you wish to discuss with him about this area?

A No, sir.

Q The effect of this order is as follows. I will read from 18 United States Code Section 6002.

"The witness may not refuse to comply with the order on the basis of his privilege against self incrimination, but no testimony or other information compelled under the order or any information directly or indirectly derived from such testimony or other information may be used against the witness in any criminal case except the prosecution for perjury, giving a false statement or otherwise failing to

comply with the order."

Do you understand what I have just read to you, Mr. Anzalone?

A Yes. Can I read?

Q Yes, let me just finish. Then you can read whatever you want.

Have you had an opportunity to consult with an attorney?

A Yes.

Q Who is that?

A Mr. Gogel.

Q Is he outside now?

A Yes, sir.

Q Is there anything further you wish to discuss with him before you testify?

A No, sir.

Q Is there something you would like to read?

A Yes.

Q You may do that at this time.

A I --

THE FOREMAN: Just read that a little louder so everybody can hear.

THE WITNESS: I wish to know if any questions of me will be asked of me that are products of any

electronic surveillance or if any electronic surveillance is available to this Grand Jury concerning my testimony.

I desire to have a copy of the transcript.

BY MR. DePETRIS:

Q Let me answer that first part for you.

No, there are no questions which are the products of electronic surveillance. There has been no electronic surveillance in this case.

A I ask specifically that I be provided with a transcript of the telephone conversation of April 22, 1972 which I believe is in possession of the United States Attorney.

If I am permitted to examine the conversation and transcript I will be more properly be able to answer questions in an accurate manner.

Q We have a copy of that transcript and that will be available at the appropriate time this afternoon.

A I ask that I be provided with a transcript of my previous testimony before the Staten Island Grand Jury which I believe is in the possession of the United States Attorney, in order for my testimony to be honest and accurate in every detail as to the events which happened a considerable time ago.

I would respectfully request an opportunity to study such testimony at a time when the events were much clearer in my mind.

Q Your attorney made that application to Judge Neaher and Judge Neaher denied the application to order the government to turn that over.

One of the grounds being there was no authority for us to turn over testimony of a State Grand Jury. It was suggested an appropriate application might be made to the State Court.

Secondly, since you brought the subject up, I myself have not read your Grand Jury testimony before the State Grand Jury and therefore any questions asked of you today will not be in any way derived from that State Grand Jury testimony.

A Thank you.

Q Finally, before I begin questioning you, Mr. Anzalone, I would like to read to you the provisions of 18 United States Code, Section 1623A or pertinent portions of that.

"Whoever under oath in any proceeding before any Grand Jury of the United States knowingly makes any false material declaration shall be fined not more than $10,000 or imprisoned not more than five years or both."

Do you understand what I have just read to you, Mr. Anzalone?

A Yes, sir.

Q Mr. Anzalone, what is your occupation?

A Vice President and Treasurer of a securities brokerage firm on Wall Street.

Q How long have you been so employed?

A Fourteen years approximately.

Q What is the name of that company?

A Swiss American Securities, Inc.

Q What are your duties in connection with it?

A I manage and invest all their capital excess and customers credit balances and I run the entire office.

Q Mr. Anzalone, where do you presently reside?

A 343 Milton Avenue, Staten Island.

Q How long have you lived there?

A Approximately, almost seven years.

Q Did you reside there in April of 1972?

A Yes, sir.

Q I would like to direct your attention to Grand Jury Exhibit No. 1 and the location of the house which is listed Albert Anzalone at 343 Milton Avenue.

Is that where you lived at that time?

A Yes.

Q Are you married, Mr. Anzalone?

A Yes, sir.

Q Do you have any children?

A I have three and one on the way.

Q Did there come a time in March or April of 1972 that you first learned that a black family was going to move into 351 Milton Avenue?

A I don't know if it was March or April. There came a time in '72, yes.

Q If I told you the fire took place in the early morning of April 22, 1972, could you tell us approximately how long before the fire you first learned about the black family moving in?

A I guess a couple of weeks, three weeks it could be.

Q Sometime prior to the fire?

A Definitely.

Q How did you learn about it?

A I think thorugh normal discussions in the neighborhood. It's maybe -- it had to be through neighbors.

Q Do you recall specifically from whom?

A No, I could have learned from my wife, my neighbor next door, across the way -- just generally speaking through the neighbors of the block.

Q Was there much discussion of this fact in the neighborhood?

A I would say there was discussions, yes.

Q What was the general feeling in the neighborhood toward the black family moving in?

A I don't know. I think generally feelings might have been a little of concern because it was supposedly block-busting.

Q When you use the words "block-busting" what do you mean by that word?

A Well, I believe someone was just trying to put them in per se, to get even with a few people on the block because the party that moved out of that particular house, I don't think he got along well with many people. I don't know. This is just my opinion.

Q Do you have any personal knowledge of any attempt by anybody, any real estate agency to attempt to purchase houses in the area?

A No.

Q Do you have any personal knowledge as to the truth of what it was you just testified to?

A None whatsoever.

Q This was just rumor?

A That's all.

Q What was your feeling toward the black family moving in?

A Well, actually my feeling was, it was block-busting. I didn't particularly care for the owner that -- no, really nothing. I didn't like the idea. I could move. I am in the position to move at any time.

Q In other words, if there were no block-busting attempts by real estate people to bring a number of black families in the neighborhood, to drive down the prices, buy the houses cheaply etcetera --

A Could I object?

Q No, aside from that I believe you testified you had no personal knowledge anything like that occurred in this case.

Putting that aside, what was your feeling toward the black family moving in?

A I didn't give it too much thought. I can't say. I might have liked it but I don't think I disliked it that much.

Q Mr. Anzalone, do you own any firearms?

When I use the word "firearms," I am using it in the broad sense; rifle, shotgun, BB gun, pellet gun?

A Yes, I own firearms.

Q What types?

A I think I own a .22 caliber rifle, I own a 30.06 rifle, I own a 12 gauge shotgun, .38 caliber pistol.

Q Do you own any BB or pellet type guns?

A No, sir.

Q Did you ever own any such type gun?

A No, sir.

Q From the time period of March or April of 1972, did you own any BB or pellet type gun?

A No, sir.

Q Do you know whether or not your neighbors on Milton Avenue during that time period of March or April of 1972 owned any BB or pellet type guns?

A No, sir.

Q Did you see any of them have BB or pellet type guns?

A To the best of my knowledge, no.

Q Directing your attention to approximately a month or so within that time frame, prior to the fire, that would be the end of March beginning of April 1972, during that time period were you ever on Milton Avenue in the vicinity of 351 Milton Avenue in the company of any persons, some of whom were carrying firearms or BB or pellet type guns?

A No, sir.

Q Were you ever involved --

A Firearms, you say firearms?

We have a lot of cops on the block. They wear the guns.

Q I will restrict my question to BB or pellet type guns. I will also restrict it to having them drawn, not holstered but in the hand of the person.

Were you ever on Milton Avenue in the vicinity of 351 Milton Avenue in the company of any persons doing what I just mentioned?

A No, sir.

Q Were you ever involved in any act of vandalism against the premises at 351 Milton Avenue?

A No, sir.

Q Specifically, did you ever shoot a BB or pellet type gun at or in the direction of the front windows at 351 Milton Avenue?

A No, sir.

Q Did you ever shoot at the front windows of 351 Milton Avenue and thereby break panes of glass in those windows?

A No, sir.

Q Were you ever present when any person shot

any kind of gun toward the windows of 351 Milton Avenue?

A No, sir.

Q Were you ever present when any damage was inflicted upon the front windows of 351 Milton Avenue?

A No, sir.

Q Do you know the identity of anyone who inflicted any type of damage or committed any act of vandalism on the premises of 351 Milton Avenue?

A No, sir.

Q Did there come a time when you learned of the damage to the front windows at 351 Milton Avenue?

A Oh, sure.

Q How did you first learn of the damage?

A I think it was through the children or my wife. I really can't -- don't recall who but I did learn of it, yes.

Q You first learned of it after it happened?

A Oh sure.

Q You did not know anything about it before it happened?

A No, sir.

Q Could you tell us approximately how many times you were in the home of Anthony Vivelo during the time you lived on Milton Avenue?

A Oh, gee, I would say almost every day.

Q In other words, you are a friend of his, a very good friend?

You visit his premises very often?

A Quite often.

Q Did you do that during the period of March or April of 1972?

A Oh, I have --

Q During that time period of March or April of 1972, prior to the fire were you ever in Vivelo's house during the late evening hours or early morning hours?

A I would say it could be, yes if he is home. The daytime -- and I am home that particular day very often, we would go to each others house. We go out together. We do a lot of things together.

Q My question just now is directed to the late evening or early morning hours. That is at night after eleven o'clock.

A After eleven o'clock, very possibly.

Q In other words, you would visit his house at night after eleven o'clock on occasion?

A Yes, definitely.

Q Do you recall any specific such occasion in March or April in 1972 prior to the fire?

A No, nothing specific but I could have been there on many occasions with my wife or by myself.

Q What was the purpose of such visits?

Just a friendly social gathering?

A Yes.

Q Were you ever present in Mr. Vivelo's house when a discussion took place about the black family that was moving into 351 Milton Avenue?

A That's a tough question. It could have been mentioned on many occasions, you know, that was a topic, the black family is moving in. A lot of people discussed it.

Q Let me make my question more specific.

Were you ever present in Mr. Vivelo's house when a discussion took place about how to prevent the black family from moving into 351 Milton Avenue?

A I would say no -- just discussion, yes.

Q If there was ever a discussion in which you discussed various methods of preventing them from moving in, is that something you would remember?

A I think I might remember it, but I don't recall any on actual prevention as I said.

Q Was it possible that you would have ever discussed something you could forget?

A It is possible. A lot of things are possible. I could have discussed something but not of anything of a drastic nature, no. I would have remembered.

Q Let me be more specific then.

Were you ever present in Mr. Vivelo's home when a discussion took place in which a suggestion was made about burning the house down?

A Burning the house down?

Q Yes.

A I think it might have been mentioned, you know, but I couldn't -- I am not sure.

Q What do you mean by that "You think it might have been mentioned"?

A Somebody might have said burn them out or something like that. If that is what you are getting at. I don't know. I could say yes or maybe.

Q Do you have a recollection of something like that happening?

A Not really. No, because if I would have heard such comments I would disregard them anyway.

Q Would it be fair to state that that would be something unusual, if someone were to suggest that a house be burned down?

A I think it is unusual, yes.

Q Isn't that something you are likely to remember?

A I would say so but I really don't remember. I really don't know how to answer that. I don't recall anything definite about burning down any house per se. Maybe somebody said burn them out but that's the extent of it. There might be a conversation and I would just laugh it off, that's silly.

Q What I am trying to get at, I do not want to speculate as to what somebody might have said. I am trying to get at your recollection, to your best recollection.

A To my best recollection --

Q May I finish the question.

To your best recollection, did anybody ever say in your presence at Mr. Vivelo's home, did anyone make a suggestion that the house should be burned down?

A To the best of my recollection, no.

Q Did you, yourself, ever make a suggestion to the effect that the house should be burned down?

A No.

Q Is there anything in the faintest part of your recollection that someone might have said something about burning the house down?

A There were so many comments made I don't know if it could have been in Vivelo's house or in the street.

People just didn't like it.

Q Who might have made such a comment?

A I don't know. I am just saying there was a lot of comments made.

Q Did you ever hear such a comment?

A I would say I probably -- I don't think so, no.

Q Did you ever hear such a comment in Mr. Vivelo's house late at night in the presence of a group of persons?

A I would say no, but that's not saying it couldn't have been said. I could have been there. I could have been in the bathroom. I don't know. I am saying I didn't hear it, no.

Q You did not hear it?

A To the best of my knowledge, no.

Q You don't recall hearing it?

A That's right.

Q Were you ever present at a discussion in Mr. Vivelo's home when a suggestion was made that holes be shot in the roof of 351 Milton Avenue?

A No.

Q Were you ever present at a discussion in Mr. Vivelo's house when a suggestion was made that Mr. Gebhardt should be beaten up?

A I heard something to that effect. I can't swear

it was in his house. I can't swear to that.

Q What did you hear to that effect?

A Why don't you beat up the real estate --

Q You recall something like that being said?

A I recall something like that. He should get a beating for what he done.

Q Do you recall who said that?

A No, it would be very unfair if I took a guess.

Q To the best of your recollection?

A To the best of my recollection, no.

Q You do not recall whether or not that would have been in Mr. Vivelo's house?

A I don't know. I really don't know.

Q At that time that was said or to your best recollection that may have been said, was there any discussion how Mr. Gebhardt would be beaten up?

A No, sir. If there was I didn't hear it.

Q Were you ever present at a discussion in Mr. Vivelo's house when someone suggested that the group could have Gebhardt beaten up and the way this could be done would be to get two or three guys to beat him up and make it look like it was not planned, like it was a fake auto accident or something?

A I don't recall. I really don't.

Q Mr. Anzalone, is there anything unusual in your mind about someone suggesting that another individual be beaten up and it be made to look like a fake auto accident?

A It certainly is.

Q If something like that was said wouldn't you remember it?

A I don't know if I would remember it. I would laugh at it. We are not in the 1920's.

Q Do you have any recollection of anything like that being said in your presence?

A No, I would say no.

Q To the best of your recollection were you ever present in Mr. Vivelo's house at a discussion when someone suggested that Mr. Gebhardt could be beaten up and it could be made to look like a fake auto accident?

A To the best of my knowledge, no. I don't recall that.

Q You do not recall anything about faking an auto accident, to beat up Mr. Gebhardt?

A No.

Q Were you ever at a discussion at Mr. Vivelo's house when an understanding was reached by those present that something had to be done to prevent the black family from moving in?

A No.

Q Did you, yourself, ever make any suggestions as to methods that could be taken to prevent the black family from moving in?

A No, sir.

Q Just one more question in this area.

Mr. Anzalone, I have mentioned, I have questioned you about three suggestions with respect to preventing the black family from moving; having the house burned down, shooting holes in the roof, and having Mr. Gebhardt beaten up by means of a fake auto accident.

Were you ever present at a discussion in Mr. Vivelo's house where all three suggestions were made or words to that effect?

A No, sir. I don't recall being present at any such meeting where those things were mentioned.

Q Did there come a time in April of 1972 when you learned that the premises at 351 Milton Avenue had suffered certain water damage?

A I would say so, yes.

Q Do you recall the house being flooded?

A I heard there was water in the house.

Q How did you learn about that?

A I think through the neighbors or through the

newspapers.

Q Did you have any knowledge of it prior to it having happened?

A No.

Q Were you ever in the house at 351 Milton Avenue after the Gebhardt family vacated it?

A Yes, sir.

Q Under what circumstances?

A I think it was, I am not sure, I am almost positive the day after the fire or the same of the fire everybody was in there looking at the damage.

Q You mean after the fire?

A Yes.

Q During the period of time after the Gebhardt family moved out and prior to the fire, were you ever in the house at 351 Milton Avenue?

A No, sir.

Q Did you participate in planning the water damage at 351 Milton Avenue?

A No, sir.

Q Did you know prior to the flooding that certain persons intended to engage in activities on the premises which would cause water damage?

A No.

Q Did you have a set of keys to 351 Milton Avenue?

A No.

Q Do you know the identities of any persons who inflicted water damage at 351 Milton Avenue?

A No, sir.

Q Do you have any knowledge with respect to who may have committed that act of vandalism?

A No, sir.

Q Did you ever tell anyone that you had been involved in the water damage at 351 Milton Avenue?

A No, sir.

Q Did you ever have occasion to be present with any of your neighbors when someone else said that they had been involved in the water damage at 351 Milton Avenue?

A No, sir.

Q Are you sure about that?

A More than positive.

Q There is evidence before this Grand Jury that the water damage took place at night.

My question to you is: Directing your attention to the next morning, did you have the occasion to see the house and see water coming out of the house?

A Gee, I don't know. I might have. I don't recall. I mean I only lived two doors away.

Q Did you have occasion to see the front door of the premises open on the morning after the flooding?

A I don't know. I didn't see the front door opened.

Q Did you have occasion to learn that paint had been thrown at the front door of the premises at 351 Milton Avenue?

A No.

Q You never heard about that?

A No.

Q Even after it happened?

A No, I don't know when it happened. I never heard of that.

Q Do you know the identity of any person or persons who committed that act of vandalism?

A No.

Q Are you familiar with an incident that took place at the Willowcreek Realty Office?

A What do you mean?

Q Do you have any knowledge with respect to a group of neighbors in the area of Milton Avenue going to Willowcreek Realty Office?

A I heard a few neighbors went up, yes.

Q That was a Sunday Afternoon?

A I don't know.

Q Did you, yourself go?

A No, sir.

Q Are you sure?

A Positive.

Q Did you ever visit the real estate office in March or April of 1972 with a group of neighbors?

A No, sir.

Q How did you learn about it?

A Neighbors, maybe my wife, I don't know. Just general discussions on the block, you know, that was the topic.

Q What did you hear about what happened at the offices?

Did you hear about any threats being made?

A No, I heard that I think just a group of people went up to try to buy a house or something. I don't know. I just stayed away from the thing. I didn't want any part of that.

Q Did you, yourself, make any anonymous phone calls to the offices of the real estate agency?

A No, sir.

Q Do you have any knowledge of anyone who di[illegible]

A No, sir.

Q Did there come a time in April of 1972 when you

learned that the real estate person Mr. Schlichtinger is his name, wanted to set up a meeting between the Charles family and the neighbors in Milton Avenue?

A No.

Q You do not recall anything about that?

A No, sir.

Q Do you know anything about Mr. Tortora having left his telephone number with the real estate agent on that Sunday afternoon when the group of neighbors went down there?

A I don't recall. I don't think so, no.

Q Do you know anything about a couple of nights later the real estate owner having called Mr. Tortora's house using that phone number?

A No.

Q Do you know anything about Mr. Tortora not having been home that night so his wife answered the phone and spoke to the real estate owner?

A No.

Q Do you know anything about his wife then receiving the call, taking his number and going outside to speak to some of the neighbors because her husband was not home?

A I don't recall, no.

Q Were you present when Mrs. Tortora came over and

told any of the neighbors that the real estate owner had called and left his telephone number?

A I don't recall. I really don't. I doubt it very much if I were present.

Q Were you present when Mrs. Tortora told the telephone number to any person in the neighborhood?

A No, no. I don't recall that.

Q Did she give that telephone number to you, Mr. Anzalone?

A Not to me, no.

Q On that occasion when she gave the telephone number to some of the neighbors, did you have occasion to tell her not to worry about it?

A If I did, I don't recall. No.

Q None of this rings any bell with you?

A No.

Q Are you aware that later that evening someone did return the call to the real estate owner and threatened him?

A No, I don't recall that.

Q Did you, yourself, call the real estate owner that night after you had received a telephone number from Mrs. Tortora?

A I didn't receive any telephone number from Mrs.

Tortora. I did not call the real estate owner.

Q Did you ever have occasion to make a phone call to the real estate office in April of 1972?

A No.

Q You have no knowledge of this phone call by the real estate owner to the Tortora's house leaving his number and someone else taking the number and later returning the call?

A To the best of my recollection, no.

Q I think you mentioned before something about somebody buying the house at 351 Milton Avenue?

A That's the word that went around.

Q Would you tell us what you know about that?

A Just simply that someone was trying to buy the house. I think that was the purpose of the real estate visit but I don't know.

Q Can you be a little more specific?

A I can't. That's all I know about it. I have no knowledge what went on at the real estate office. I really didn't care.

Q Did there come a time in April of 1972 after the incident at the real estate office and prior to the fire when people in the neighborhood made efforts to solicit money in connection with 351 Milton Avenue?

A I heard of that.

Q What do you mean?

How did you hear about that?

A People running around the block, they are going to try to buy the house. That's all.

Q Who was saying this?

A I am not sure. It might have been Tortora.

Q To the best of your recollection who was saying this?

A Everyone.

Q Do you recall when?

A Oh, no.

Q Was it prior to the fire?

A I think so, yes.

Q What was the purpose of the solicitation of money?

A I have no idea.

Q You have no personal knowledge of it?

A No, other than they were trying to buy the house. I presume that was the purpose of solicitation of funds.

Q What I am trying to get at is whether or not you have any personal knowledge with respect to that effort to buy the house.

Is this hearsay or rumors you heard or were you

present when conversations actually took place?

A No, I was not present.

Q Were you ever present when any conversation took place for raising money to purchase the house at 351 Milton Avenue?

A No, sir.

Q Prior to the fire in April of 1972 were you involved in any way in the solicitation of money with respect to 351 Milton Avenue?

A No.

Q Did you, yourself, ever solicit anybody else to contribute money?

A No.

Q Did anybody else solicit you to contribute for this purpose?

A No. I would have to ask my wife if they came. Maybe they came in the daytime. They never came to me.

Q They never came to you?

A Right.

Q There was evidence before this Grand Jury, Mr. Anzalone, that efforts were made by a group of people in the neighborhood to raise money for a downpayment to purchase the house at 351 Milton Avenue.

The idea was that a white family could use this

money to make a downpayment and that way they could prevent the black family from moving in.

Do you understand what I have said?

A Yes.

Q And there was evidence that the idea was if everyone would contribute a sum of money to use, for example $50, then they might be able to raise a downpayment.

Do you have any knowledge whatsoever with respect to any efforts to solicit money in that regard?

A I heard of a **collection** but as far as that goes, no. I mean I just heard of a **collection.**

Q What do you mean you heard of a **collection?**

Were you present at any conversation when this was discussed?

A When it was discussed, you mean at a meeting of some sort?

Q Any discussion by anybody in the neighborhood.

A I could have heard it in the street, right outside the house that neighbors were going to get together and buy the house if that's what you mean. Yes, sure I heard of it but I don't know of anything else.

Q I am trying to picture under what circumstances.

Did they ask you for money?

A I did not ask anyone for money. Under the circum-

stances I heard it. I resided on Milton Avenue. Those are the circumstances.

I live there. I sit outside at night. I sit in my backyard. This is how I heard it. I could have also heard it from my wife in a normal discussion.

Q Were you ever present when it actually happened?

A No.

Q In other words, this would be hearsay information?

You might have heard, maybe there is a group in the neighborhood that was trying to do this?

A Maybe there was a group that was going to try to purchase the house.

Q Were you ever out in the street one night when they were actually doing this, going from house to house ringing door bells?

A I might have been on the street but I was never with them.

Q Do you have any information people were going from house to house in an effort to raise money in connection with 351 Milton Avenue?

A No.

Q Were you aware of any purpose to preventing the black family from moving in by raising money to purchase the house?

A I don't understand that question.

Q I will rephrase it.

Did you, yourself, have any purpose to preventing the black family from moving in?

A No.

Q By these efforts to raise money, to purchase the house?

A No.

Q I ask you once again, were you involved in any way in the solicitation of money with respect to 351 Milton Avenue?

A No, sir.

Q Are you aware of any list of names that was maintained of people who were willing to contribute money to purchase the house?

A No, sir.

Q Are you aware of the destruction of that list after the fire?

A No, sir.

Q Mr. Anzalone, I would now like to direct your attention to your activities on the afternoon and evening of April 21, 22 of 1972.

That was the night of the fire at 351 Milton Avenue.

Where were you that afternoon?

A I would say working.

Q Did there come a time when you came home?

A Yes, the normal time is six, seven o'clock around that time.

Q What did you do that evening?

A Specifically, come home, ate, sat outside, went back inside, nothing special.

Q Did you speak to any persons on the street that night?

A I would say probably, sure.

Q Do you recall any specific conversation?

A No.

Q Were you aware that night that the Charles family was going to move into the house, was about to move into the house, was in the process of moving into the house?

A I don't know if I was aware that they were going to move that night. I was aware they were going to move in eventually.

Q Were you told that evening, the night of the fire prior to the fire thatthe black family was seen moving in some boxes that day?

A Oh, yes.

Q So you were aware prior to the fire then that the

black family had moved some boxes into the house?

A Sure.

Q Would it be fair to state that you were aware then they were about to move in at any time?

A If you can move boxes and furniture -- I don't know if it is today or tomorrow you are moving, yes.

Q Do you recall whether or not you took your family out to dinner that night?

A I might have. I am not sure. I think I might have. I think that was a question asked at the previous Grand Jury. I am not sure but I think I might have taken that out.

Q Do you recall what time you went to bed that night?

A That night?

Q Yes.

A I didn't go to bed until after the fire engines and everything came.

Q You were still up and awake at the time of the fire?

A Oh, sure.

Q What did you do that evening?

Let us start with the afternoon, ten or eleven o'clock.

A I might have been watching television. I might have been outside. I don't really recall specifically what I did. I could have been in and out of the house. I was home, let's put it that way.

Q What would be the last time you were outside that evening?

A I don't know. It is so long ago. It could be eleven o'clock, 11:30. It could be even about ten o'clock. I don't know.

Q Were you outside after midnight that night?

A Outside -- no, I went to the door after midnight to let someone in, yes.

Q Who was that?

A Anthony Vivelo.

Q Mr. Vivelo came over to your house that evening?

A Sure.

Q Do you recall what time that was?

A I would say it would have to be maybe a little before 12:30, a little after 12:30 roughly, that time.

Q Did Mr. Vivelo work that night?

A From four to twelve.

Q He worked that night from four to twelve?

This is the night of the fire?

A If that's the night.

Q You were describing to us the night of the fire.

You said there came a time when he came over to your house about twelve, a little before 1:30.

A Yes, that's the night of the fire.

Q That is the night of the fire?

A Right.

Q Where does Mr. Vivelo work?

A New York City Police Department.

Q Where?

What precinct?

A At that time 60th Coney Island Precinct.

Q Where was he physically located?

A What do you mean "physically located"?

Q Where was the precinct located?

A I just said Coney Island.

Q He would leave the Coney Island Precinct at about midnight?

A I guess so. I don't know exactly what time he leaves the precinct.

Q About how long does it take to get from Coney Island Precinct to Staten Island?

A Half an hour, twenty minutes, forty minutes, depending on traffic. It is not very far.

Q Anywhere from twenty minutes or forty minutes, depending on the traffic?

A Sure.

Q That night you say he came over to your house about what time?

A I have to say about 12:30. I don't know the exact time. Five minutes, one way or the other.

Q Approximately 12:30?

A Approximately, yes.

Q What happened when he came over?

A What happened?

Q Yes.

A He knocked on my door, he needed a key to get into his house. He couldn't get in. He didn't have no key.

Q Would you explain that to the Grand Jury?

A He came to my door, knocked on my door, said that he couldn't get into his house because he had no key. He asked to use my telephone. I let him use my telephone and I also gave him a cup of coffee. That's what happened.

Q He came in, used your telephone to call his wife?

A Yes, to wake her up.

Q To tell her to unlock the door?

A Yes.

Q Then he had a cup of coffee?

A Yes, sir.

Q Was he in civilian clothes or police clothes at that time?

A I would say civilian clothes.

Q Does he normally leave his police attire in the precinct and come home in civilian clothes?

A To the best of my knowledge, yes.

Q He was in civilian attire at that time?

A Yes.

Q Was your wife present?

A Yes.

Q Was she in the kitchen when you were having the cup of coffee?

A I believe she came down. She came down to make it. I don't know whether or not she had it with her. I don't recall that.

Q And after he had the cup of coffee?

A He spoke to his wife. He went home.

Q He left your house?

A Yes.

Q About how long was he there?

A I don't know -- fifteen, twenty minutes.

I can't go down specifically to time. I don't know. He could have come to my house a quarter of one. I really don't know. I am guessing. It's 12:30 if we are going to speak of time. I can't --

Q If he came in at approximately 12:30, approximately what time did he leave?

A He must have left five to one, one o'clock.

Q How long did he stay at your house?

A About half an hour tops.

Q Would it be more like ten or fifteen minutes?

A It could be more like ten minutes to half an hour.

Q Do you recall being interviewed by police detectives shortly after the fire?

A Yes, I believe so.

Q Do you recall telling him about this Vivelo coming over and getting his keys?

A I don't know if I told him. I don't recall.

Q Do you recall telling him he called his wife, had a cup of coffee and stayed about ten minutes?

A I don't recall the exact testimony, no. I would say if that's what I said, that's what I said.

I don't know if it was ten minutes, twenty, or half an hour.

Q In any event, to the best of your recollection at this time he came over at 12:30 and left by one o'clock?

A Yes.

Q What did you discuss while he was there?

A Oh, I don't recall what we discussed. We were laughing because he couldn't get into his house.

Q Did you discuss the black family at all?

A I don't think so.

Q Any discussion about burning the house down?

A No.

Q Any discussion in any way of a fire with respect to the house?

A No, sir.

Q Did you see Mr. Vivelo again that night?

A Did I see him again?

Q Yes.

A Sure, later on in the night.

Q That was after the fire?

A I believe so, yes. Everybody came out of the houses. We all saw everybody.

Q After the fire started you mean?

A I would say so but I really don't recall. I would say yes, after the fire engines arrived.

Q After he left your house, called his wife, had

a cup of coffee which you say is about one o'clock, after that time prior to the fire which took place at two o'clock or shortly thereafter, in that intervening time did Mr. Vivelo come over to your house again?

A No.

Q You are sure about that?

A Positive.

Q Did he come over to your house to tell you anything about a fire?

About planning or participating in a fire?

A No, sir.

Q Did he tell you about having engaged someone to burn the house down that night?

A No, sir.

Q Was there any discussion about, we better do it tonight becuase they are moving in tomorrow?

A No, sir.

Q After one o'clock that night you did not see Mr. Vivelo again prior to the fire; is that correct?

A If that's the time, one o'clock, yes.

Q Then there came a time when you learned about the fire that night; is that correct?

A When I learned about it?

Q Yes.

A I called the fire in. You know that.

Q That is what I am getting at. After Mr. Vivelo left, what did you do then?

A I went to the bathroom.

Q Pardon?

A I went to the bathroom. I did whatever I had to do in there besides taking a shower. I was in the men's room of my house, the bathroom. I was in the bathroom.

Q Would you tell us the circumstances under which you learned about the fire?

A I smelled smoke.

Q Where were you when you smelled smoke?

A In the bathroom.

Q What did you do?

A I went over to my daughter's room becuase I thought there was a fire in my daughter's room or in the house somewhere and I kept smelling the smoke. I looked out the window and there appeared to be smoke out there -- well, a smell anyway.

Q What do you mean "a smell"?

Did you actually see any smoke?

A I think it was very dark. I would say yes, yes I saw some smoke. Then I went downstairs, opened the back

door, went into my yard and saw smoke.

Q Why did you go outside that night?

A I wanted to find out where the fire was. I didn't know whether it was my house burning or somebody elses.

Q You went outside the back door to see if there was a fire anywhere; is that correct?

A Yes, that is correct. I knew my house wasn't on fire.

Q You did not go outside to put the bikes away and close up the house for the night?

A I might have. I don't recall. I mean I was -- I smelled smoke upstairs, then I came downstairs and there were bikes in the yard. Usually I go out to put them away at night. I might have been putting it away but also to try to find out where the smoke is.

Q My question is, Mr. Anzalone, when you went outside that night were you going outside in the normal course of putting bikes away, closing the house or were you going outside to see if there was a fire?

A I would say I was going outside normally to put away some stuff in the back yard but also I smelled something. There was something unusual.

Q What did you do when you got outside?

A I looked outside. I saw smoke. Then I came inside.

Q Did you put the bikes away?

A I don't recall. I might have just touched them. I don't know.

Q Did you see smoke?

A Yes.

Q Where did you see smoke?

A I saw it coming from down the block.

Q Could you step down from the witness stand?

A Sure. I saw it coming from this area down this way (indicating). That's the way it appeared.

Q Pointing to the rear yard area in between your house at 343 Milton Avenue and how far down?

A Oh, I don't know. It was all around.

Q Down to 357 Milton Avenue?

A I can't say the number.

Q That approximate area?

A I saw it coming from all around. It could have been coming from here to -- I don't know.

Q Do you know at that time if any house was on fire?

A I guess I could see something was burning. I don't know if it was a house or something in the backyard.

But I would say something was burning and I called the Fire Department. I think that's when I called the Fire Department.

Q You went inside and called the Fire Department?

A I believe that's when I did it. I am not sure.

Q What did you tell the Fire Department?

A To come down to Milton Avenue, something to that effect. There is a fire over here. I don't know the exact words.

Q Did you tell them where the fire was?

A On Milton Avenue.

Q Were you anymore specific?

A No, I didn't know where it was.

Q Did you tell them which house it was at?

A To the best of my knowledge, no. I didn't tell them.

Q Do you know which house it was at?

A No.

Q Did you identify yourself?

A No -- on the phone?

Q Why not?

A I didn't think it was necessary.

Q Any other reason?

A Not really. Why should I get involved. I called

in the fire. I am a citizen. I expected the Fire Department to act on it and come down.

Q What do you mean you "didn't want to get involved"?

How would that be getting involved?

A Right now just because I called this fire in, I am here all the time. This is one of the reasons.

Q Did you ever give any other reason?

A I don't know.

Q Did you ever tell anybody that you did not want to identify yourself because usually the person who calls in an alarm is the one that sets the fire?

A I might have said that.

Q Do you recall saying that?

A I might have. I don't recall. I might have.

Q Would that be a fair statement of your feeling at the time?

A At that particular moment it might have been. I don't remember. It's such a long time ago. I would say probably, yes.

Q What knowledge do you have with respect to persons calling in alarms?

Had you ever called in an alarm before?

A No.

Q Have you ever called in an alarm since?

A No.

Q Do you anybody who has called in a fire alarm?

A No.

Q Have you read about anybody calling fire alarms in?

A Sure, I read about it in the papers. He is the prime suspect.

Q What is the source of your feeling?

A It's just my own.

Q The person that calls in an alarm is the one that sets the fire?

A It's my personal feeling and from what I read.

Q What did you do after you called in the fire the first time?

A I think I ran out the front door to direct the fire engines but they didn't come. Then I ran back in again and I think I instructed my wife to call or I called. I don't recall but we made another call.

Q What do you mean to "direct the fire engines"? Wouldn't that be getting involved as you used the term?

A To a certain degree, yes, sure.

Now you could see there was a house burning. It

might be people dying.

Q Did you go out the front door or back door?

A I don't recall. I think it was the front door. I might have went out the back door again.

Q Would it refresh your recollection if I told you that on being interviewed by the Police Department after the fire you indicated that you went back into the yard again?

A That could be correct.

Q Do you recall whether or not the first time you were out you saw smoke or did you see any flames?

A No, the first time out I saw smoke, more smoke and you couldn't tell where it was. A house or maybe a bush fire because they have a lot of them.

Q You did not see any flames at that time?

A To the best of my knowledge, no.

Q Did there come a time when you did see flames?

A I think the second time I went out there I saw flames, not flames --

Q It appeared you were searching for a word.

You do not like the word flame?

Would glow be a better word?

A Yes, sort of somewhat of a glow back there.

Q What did you do then?

A I think I ran in the front door. I might have called again. I don't know what I did first.

Q Would it refresh your recollection if I said your wife was on the phone?

A Well, I just stated that either me or my wife called the second time. I don't recall which one of us did that.

Q What was said the second time?

A I think there was a fire on Milton Avenue.

Q Did you identify the house at this time?

A No.

Q Where did you see the glow? A couple of houses down.

A You are talking about one o'clock in the morning -- I don't know what number it was.

Q Did you identify yourself on this occasion?

A No, sir.

Q Were you asked to identify yourself?

A I believe so.

Q What did you do?

A Just told them to get down here, to put out the fire, something to that effect.

Q Again you refused to identify yourself?

A Correct.

Has it been noted that I did identify myself?

Q We will get to that.

A No, no, just curious.

Q What did you do after this second call?

A I think I went out the front door and I went down towards the house and at that particular time someone was running out of the house. I believe it was, I don't know his name. I think his name is Leo.

Q You mean Glaser?

A Yes. Somebody was running out of Glaser's house. I believe it was Leo. I am not sure.

Q How long had elapsed between the time you were in the bathroom and you first smelled smoke and the time you were now out on the street and you saw Glaser?

A I don't know. It could be five minutes, ten minutes. I really don't know. I couldn't give you a --

Q Did you --

A It seemed like a year to me.

Q Did you make any attempt to alert the Glasers about the fire or the smoke?

A I ran out to do that, to find out what was actually burning and then you know, my main purpose was -- it could have been a house with occupants. I was going to knock on the door something.

Q After your first phone call, did you try to alert them at that time?

A No, because I wasn't so sure it was actually a house.

MR. DePETRIS: I think this may be an appropriate time to take a recess.

At this time I will hand Mr. Anzalone a copy of the transcript or tape of the phone calls made by him calling in the alarm that night.

He may want to review it with his attorney.

We will take a short recess.

(Short recess was taken.)

ALBERT ANZALONE, called as a witness, having been previously duly sworn resumed, testified further as follows:

THE FOREMAN: Mr. Witness, you are still under oath.

THE WITNESS: Yes.

BY MR. DePETRIS:

Q Mr. Anzalone, have you had a chance to review the transcript of the phone calls?

A Yes.

Q Is there any further comment you would like to make after having reviewed that transcript?

A No.

Q The night of the fire there were a number of people out on the street after the fire engines came?

A Oh, yes.

Q Did you have any conversations with anybody?

A The fire chief.

Q What did you tell him?

A I told him I am the guy that called up. I am pretty mad nobody responded fast enough. He took my name and address.

Q Keep your voice up.

Did you have any conversations with anybody else?

A Oh, I don't know. I guess some of the neighbors, yes.

Q Was Vivelo out on the street that night?

A I think his wife woke him up. I think everybody came out. We took some of the people into his house.

We invited them. I invited Leo. I told Leo I want you to come into my house. I don't think I got any reply out of Leo.

Q Was there any conversation whether or not the fire was arson?

A No, I think the main concern was the children because there were a lot of children involved in the smoke.

Q Subsequent to the fire, did anyone ever tell you or do you remember learning from any source who was involved in setting the fire at 351?

A There was talk who could have done it but nothing like he did that or --

Q Any answers to who could have done it?

A Answers?

Q Yes.

A I could give you some answers. I don't think they are right. I don't know. The answers were that the family themselves did it or somebody from outside the area did it. Those are the typical remarks.

Q I did not mean to ask about remarks, Mr. Anzalone.

I meant any conversation based upon something more than mere speculation, any conversation as to --

A Any substance -- no, sir.

Q Do you believe now that any of your neighbors were involved in setting the fire?

A No.

Q During the course of the investigation by the Staten Island Grand Jury and by the Federal Bureau of Investigation, did you have occasion to speak to any of your neighbors about the investigation?

A Yes, I think I spoke to quite a few people, maybe

a few people myself -- Vivelo, Nicky --

Q Nicky?

A Nicholas Lombardi. I don't know if there are anymore. Just generally speaking when someone got called. There was a discussion, you know, hey, why did you get called.

Q Was there any discussion about what the person testified to?

A I would say probably, you know, what was said up there, what was asked.

Q Did you ever suggest to anyone that they should not say anything about you or their activities with regard to the events at 351 Milton Avenue?

A No, sir.

Q Were you ever present when such a suggestion was made?

A To the best of my knowledge, no.

Q Did anyone ever say to you, you should keep quiet about what happened at 351 Milton Avenue?

A No.

Q Did you ever discuss the investigation with Mr. Barbieri?

A I might have in the **supermarket.** I met him in the **supermarket** a couple of months back. Jesus, it's on

again. We didn't know.

Q Did he tell you that the FBI was still investigating the case?

A We might have told me that. I think it was obvious. I think he received a phone call from the FBI. I am not sure if it was this year or last year they wanted to question me.

Q Did you ever tell anybody during the course of the investigation words to the following affect.

"Don't worry. They are stupid. They haven't got anything"?

A To the best of my knowledge, no.

Q Do you recall every telling any of your neighbors anything and at the time you had a big grin on your face?

A I might have had a grin on my face.

What did they have now. Sure, I might have.

Q Did you ever tell anybody "Don't worry. They haven't anything"?

A I might have said what could they have. I don't remember the exact words, but what could they have.

Q At any time did you get together with Mr. Vivelo and agree to make up a story which would jibe?

A No, sir.

MR. DePETRIS: Mr. Foreman, I direct your

attention to subsection D of 18 United States Code, Section 1623.

THE FOREMAN: I am going to ask the secretary to read that because of my poor eyesight.

Do you wish that to be read to the witness?

MR. DePETRIS: Yes.

THE FOREMAN: Please proceed.

THE SECRETARY: "Where in the same continuous court and Grand Jury proceedings, where a declaration is made the person making the declaration admits such declaration to be false, such admission bars prosecution under this section, if at the time the admission is made the declaration is not substantially fixed at the proceeding or it has not become manifest that such falsity has been or will be exposed."

Do you understand that?

THE WITNESS: No.

MR. DePETRIS: I think it would be appropriate, Mr. Secretary, if we were to have Mr. Anzalone discuss that with his attorney.

THE SECRETARY: Yes.

BY MR. DePETRIS:

Q Then you will be given an opportunity to come

back again if you wish.

That means if you have made any false statements, today knowingly that were false, a material false declaration you can come back at a subsequent proceeding and admit that it was false and tell the Grand Jury that it was false.

A I want to tell you the truth now.

Q Then under the section set forth in here "Such admission shall bar prosecution for giving a false statement under this section."

To use layman's words if you lie today and tell us, tell the Grand Jury that you did lie and you now want to tell the truth that act is a bar for prosecution for giving a false statement.

I do not want to discuss the circumstances in here. That is a legal thing, that you should discuss with your attorney.

The Grand Jury wanted you to show this to your attorney.

THE FOREMAN: Any questions?

Thank you, Mr. Witness.

(Witness excused.)

(Time noted: 3:55 o'clock p.m.)

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UNITED STATES GRAND JURY

EASTERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

-v- : 723-100

JOHN DOE :

- x

United States Courthouse
225 Cadman Plaza
Brooklyn, New York 11201

April 29, 1975
4:00 o'clock p.m.

APPEARANCES:

RONALD DePETRIS, Esq.
Assistant United States Attorney

WITNESS:

ANTHONY VIVELO

Nina J. Coden
Grand Jury Reporter

RALPH FINK & ASSOCIATES
Certified Stenotype Reporters
140 NASSAU STREET
NEW YORK, N. Y. 10038

REctor 2-5566

ANTHONY VIVELO, called as a witness, having been first duly sworn by the Foreman of the Grand Jury, testified as follows:

BY MR. DePETRIS:

Q Would you please state your name?

A My name is Anthony James Vivelo.

Q Mr. Vivelo, you were last here on April 15, 1975. Do you recall that?

A Yes.

Q At that time you declined to answer questions on the grounds that your answers might tend to incriminate you and you refused to testify on the basis of your Fifth Amendment privilege against self incrimination. Do you recall that?

A Yes.

Q I would now ask --

A I wish to read a statement.

Q Yes, but before you do that let me have the Secretary read this.

THE FOREMAN: Yes, I wish you would.

MR. DEPETRIS: Mr. Secretary, would you read the ordering paragraph of this order signed yesterday by Judge Meaher.

THE SECRETARY: "Now therefore it is ordered pursuant to Title 18 United States Code, Section 6002-6003 that the said Anthony Vivelo gives testimony which he refuses to give on the basis of his privilege against self incrimination as to all matters about which he may be interrogated before said Grand Jury.

"This order shall become effective as provided in Title 18, United States Code Section 6002."

BY MR. DePETRIS:

Q Mr. Vivelo, have you discussed this order with your attorney?

A Yes.

Q Do you understand it?

A Yes.

Q The section last referred to, Section 6002 states in part as follows.

"The witness may not refuse to comply with the order referring to the order on the basis of his privilege against self incrimination but no testimony or other information compelled under the order or any information directly or indirectly derived from such testimony or

other information may be used against the witness in any criminal case except the prosecution for perjury, giving a false statement or otherwise failing to comply with the order."

Do you understand what I have just read to you?

A Yes.

Q You have had occasion to discuss this with your attorney?

A Yes.

Q Who is that?

A Mr. Gogel.

THE FOREMAN: Please raise your voice.

Q Is he outside today?

A Yes.

Q I would like to read to you one other provision of the law and then you can make whatever statement you wish.

I will read from pertinent portions of Section 1623.

"Whoever under oath in any proceeding before any grand jury of the United States knowingly makes any false material declaration shall be fined not more than $10,000 or imprisonment for not more than five years or both."

Do you understand what I have read to you, Mr.

Vivelo?

A Yes.

Q Is there a statement you wish to make?

A Yes. I wish to know if any questions will be asked of me which are products of any electronic surveillance which was available to this Grand Jury concerning my testimony.

Q There is no such electronic surveillance and consequently no questions of any electronic surveillance.

A Your reply -- it's a long statement.

Q I do not know.

A I would like to have a copy of the transcript of such electronic surveillance so that I may confer with my attorney.

Q You can leave out anything about electronic surveillance because there is no electronic surveillance.

A All right.

Q Mr. Vivelo, what is your occupation?

A I am a Police Sergeant. City of New York Police Department.

Q How long have you been so employed?

A For ten years.

Q Where are you currently located?

A I am assigned to the 71st Precinct.

Q Where is that?

A Brooklyn.

Q In March and April of 1972 where were you located?

A 60th Precinct in Brooklyn.

Q Where is that located?

A Coney Island.

Q Where do you presently reside?

A 356 Milton Avenue, Staten Island.

Q Directing your attention to Grand Jury Exhibit No. 1, the house marked on that exhibit is Anthony Vivelo, 356 Milton Avenue.

Is that where you presently reside?

A Yes.

Q Is that where you resided in March and April of 1972?

A Yes.

Q How long have you resided there?

A About five years.

Q Are you married?

A Yes.

Q Do you have any children?

A Two children, one on the way.

Q Did there come a time in March or April of 1972

that you first learned that a black family was going to move into 351 Milton Avenue?

A Yes.

Q And do you recall when you learned that?

A Not specifically.

Q If I tell you that the fire occurred on the early morning of April 22, 1972, can you tell us how long before the fire you learned about it?

A Approximately a month.

Q How did you learn about it?

A I guess I heard it from the neighbors.

Q Do you recall whom?

A No.

Q Do you recall the circumstances under which you heard it?

A I guess through talk with neighbors.

Q Was there much discussion of this fact in the neighborhood?

A It was the topic of the day at that time.

Q What was the general feeling in the neighborhood about the black family moving in?

A It was a mixed feeling.

Q What do you mean by "mixed"?

A Some people might have favored it, I don't really

remember, recall. Some might have been against it.

Q What was your feeling toward it?

A I didn't take an aggressive stand against it. They move in, they move in. That's how I felt.

Q Were you for it or against it or neutral?

A I was neutral.

Q Did you have any strong feelings against the black family moving in?

A No.

Q Was there any discussion in the neighborhood of possible methods that could be used to prevent the black family from moving in?

A I know there was a group that went down to the real estate office to try to talk.

Q Let me put it to you this way.

Did you participate in any discussion in the neighborhood of possible methods that could be used to prevent the black family from moving in?

A No.

Q Do you own any firearms and by "firearms," I mean guns of any kind or rifles, BB gun, pellet gun, anything of that nature?

A Quite a few.

Q Would you describe them for the Grand Jury?

A Three .57 Smith and Wesson, four inch barrel, four inch .38 caliber military police, two inch colt .38 caliber Detective Chief, five inch Ruger .22 caliber, two inch, five shot Smith and Wesson -- I don't know. I think it's called, I don't recall the exact model of it.

A JUROR: What was the caliber?

THE WITNESS: .38, three .38's, one .57 one .22, and a .22 rifle.

BY MR. DePETRIS:

Q Mr. Vivelo, do you own any BB gun or any pellet type gun?

A No.

Q Any kind of CO-2 operated gun?

A No.

Q Did you ever own any BB or pellet type gun?

A Yes.

Q When did you own that?

A Oh about ten years ago, I guess.

Q When did you last have that?

A Only for a year.

Q Do you have to have a permit of any kind to have that?

A No.

Q Did you have any BB or pellet type gun in March or April of 1972?

A No.

Q Do you know whether or not any of your neighbors on Milton Avenue at that time owned any BB or pellet type gun?

A I don't know if they did.

Q Did you ever see anyone with one?

A No.

Q Directing your attention to the time period of a month or so prior to the fire, April of 1972, were you ever on Milton Avenue in the vicinity of 351 Milton Avenue in the company of any persons, some of whom were carrying a firearm or BB or pellet type gun of any kind?

A Would you go over that please?

MR. DePETRIS: Would you read that question back to the witness, please.

(Whereupon, the pending question was read back.)

A Not a BB gun. I may have been talking to another police officer. I don't know.

Q Were you ever in the vicinity of 351 Milton Avenue at night when any persons had guns drawn?

A No.

Q Were you ever involved in any act of vandalism against the premises of 351 Milton Avenue?

A No.

Q Would you please keep your voice up?

A No.

Q Specifically, did you ever shoot --

A Excuse me?

Q Specifically, did you ever shoot a BB or pellet type gun at/or in the front windows at 351 Milton Avenue?

A No.

Q Did you ever shoot any type gun at the front windows of 351 Milton Avenue?

A No.

Q Were you ever present when any other person shot any type of gun at the front windows of 351 Milton Avenue?

A No.

Q Were you ever present when any damage was inflicted upon the front windows at 351 Milton Avenue breaking the glass?

A No.

Q Do you know the identity of anyone who inflicted any type of damage or committed any type of vandalism at the premises of 351 Milton Avenue?

A No.

Q Did there come a time when you learned of the damage to the front windows at 351 Milton Avenue?

A Yes.

Q How did you learn about that?

A I don't really recall specifically. I might have learned through observation.

Q Was that after it already happened that you first learned of it?

A Yes.

Q Do you know the identity of the persons who did that act of vandalism?

A No.

Q Do you have any knowledge whatsoever with respect to that act of vandalism prior to having it happened?

A No.

Q Directing your attention to the time period of March, April of 1972, during that time, on approximately how many occasions were any of the following individuals in your home: Gerald Maddalone, Albert Anzalone, John Torreale, Nicholas Lombardi, Robert Barbieri?

A They were in my home at various times.

Q What is your relationship with them?

Which ones are your friends or acquaintences, neighbors?

A I am friends with Mr. Anzalone, Mr. Morreale, Mr. -- a neighbor of Mr. Lombardi and Mr. Barbieri.

Q What is your relationship with Mr. Barbieri?

A As a neighbor when he was living there.

Q What about Mr. Maddalone? As a neighbor.

A He was a police officer.

Q Was there ever any occasion when Mr. Maddalone, Mr. Lombardi and Mr. Barbieri were ever in your home?

A Were there any occasions?

Q Yes.

A Possibly. I really don't know if they were there all at the same time. Who were there, when.

Q Aside from social gatherings, was there any other occasion?

A No -- aside from social gatherings, coffee?

Q Right.

A No.

Q Were these people ever in your home during the late evening hours or early morning hours sometime after eleven o'clock p.m. during the period shortly prior to the fire?

A Shortly prior within, I would say of them could have been in my house that late in the evening. It would be unusual if anybody was in my house.

Q Again, on a social occasion?

A Yes.

Q Do you recall any specific occasion when all four of them were present?

A No. They could have been. I really don't know if all four were present at any one time or two or three out of the four. Whatever it is.

Q Did any discussion ever take place in your home about how to prevent the black family from moving into 351 Milton Avenue?

A No.

Q Whenever any of those other persons that I just mentioned, Maddalone, Anzalone, Lombardi, and Barbieri -- did the discussion ever take place with any of them how to prevent the black family from moving into 351 Milton Avenue?

A No.

Q During April of 1972, prior to the fire, was there ever a discussion in your home during at which time a suggestion was made that holes be shot into the roof of 351 Milton Avenue?

A No, I don't remember any. I don't remember any. I would remember something like that.

Q Is that something unusual?

A Yes.

Q Something you would remember?

A Yes.

Q Did you, yourself, ever make such a suggestion?

A No.

Q Did you ever hear such a suggestion?

A No.

Q Was there ever a discussion in the late evening at your home when someone suggested 351 Milton Avenue should be burned down?

A No.

Q Did you ever make such a suggestion?

A No.

Q Was there ever any discussion in your home to the effect that Roy Gebhardt should be beaten up and that it should be made to look like a fake auto accident?

A No.

Q Did you ever make such a suggestion?

A No. I don't really know the man.

Q Did you ever hear anyone else make such a suggestion?

A No.

Q Did you ever say you knew some people who could arrange such a fake traffic accident?

A No.

Q Was there ever a discussion in your home in which an understanding was reached by those present that something had to be done to prevent the Black family from moving in?

A No.

Q During April of 1972, did there come a time when you learned that there had been some water damage at 351 Milton Avenue?

A Yes.

Q How did you learn about that?

A A police sergeant came to my door and told me. He was assigned to that precinct. I guess they were taking a report.

Q He told you about it?

A Yes.

Q Did you have any knowledge of it prior to that?

A No.

Q Did you ever see the water flowing out of the house?

A No.

Q Were you ever in the house at 351 Milton Avenue after the Gebhardts vacated it?

A You mean while it was vacant -- I don't know if

I was in there. Recently when a new neighbor --

Q Has a new neighbor moved in there?

A Yes.

Q After the Gebhardts vacated it and prior to the fire during a period of time, were you ever in the house?

A No.

Q Did you participate in planning the flooding or water damage at 351 Milton Avenue?

A No.

Q Did you know prior to the flooding that any person intended to cause that water damage?

A No.

Q Do you know the identities of the persons who inflicted that damage?

A No.

Q Did there come a time when you learned that paint had been thrown at the front door of that house?

A Yes.

Q How did you learn about that?

A Through observation. I learned through observation.

Q After it happened?

A Yes.

Q Did you participate in that?

A No.

Q Do you know the identity of the person or persons who did that act?

A No.

Q I think you referred earlier to a visit to the Willowcreek Realty Office.

A I don't know the name of it.

Q To the real estate office?

A Right.

Q That was on a Sunday afternoon?

A I don't know what day it was on.

Q Did you, yourself, participate in that effort?

A No.

Q How did you hear about it?

A I guess through neighbors.

Q What did you hear about it?

What was the purpose of the visit as far as you understand it?

A They were trying to find out some facts. Whether someone was renting or buying or something.

Q Do you have any information about any threats being made?

A Do I have any -- no.

Q Did anyone ever tell you any threats were being

made?

A No.

Q Did you at any time make any anonymous phone call to the real estate office?

A No.

Q Do you know anyone who did?

A No.

Q Did you ever become aware that the real estate owner wanted to set up a meeting between the Charles family and the neighbors on Milton Avenue?

A No.

Q Did you participate in any vote by certain persons in the neighborhood in which you decided not to go to any such meeting?

A No.

Q Did you ever say that such a meeting might be a setup?

A Did I ever say --

Q Did you ever tell anybody that such a meeting might be a setup?

A No.

Q Did anybody ever tell you that Anthony Fortora who lived at 336 Milton Avenue received a phone call from the real estate owner about such a meeting?

A I heard about it.

Q How did you hear about it?

A I guess through neighbors. I don't know. I gues through people on the block talking. I don't recall who.

Q You did hear about a meeting then?

A I don't know if it was before the fire or after it. I heard there was a meeting.

Q Did you have any knowledge about any steps that were taken after Mr. Tortora received that phone call about the meeting?

A No.

Q Did you have any knowledge that anybody calling back the real estate owner and threatening him?

A No.

Q Are you aware that Mr. Tortora left his telephone number with the real estate owner that Sunday when they visited the real estate office?

A Am I aware of it?

Q Yes.

A No.

Q Do you have any knowledge with respect to whether or not the real estate owner called Mr. Tortora that night or two days later and spoke to his wife, Mr. Tortora not

being home and Mrs. Tortora then going outside and speaking to some of the neighbors and telling them about the phone call from the real estate owner?

A I am sorry -- do I have any knowledge of a phone call?

MR. DePETRIS: Read the last question back to the witness.

(Whereupon the pending question was read back.)

A No.

Q Do you have any knowledge with respect to whether or not Mr. Tortora gave the telephone number of the real estate owner to any of the neighbors and then one of the neighbors called the real estate owner back?

A No, I have no knowledge of whether he gave he gave his telephone number out.

Q Do you have any knowledge as to whether or not Mr. Anzalone, the person who got the telephone number from Mrs. Tortora --

A No.

Q Did there come a time in April of 1972 when you learned about a solicitation of money being undertaken in the neighborhood to purchase a house at 351 Milton Avenue?

A Did I know of any solicitation?

Q Yes.

A Nobody solicited, nobody came to me and asked me for money.

Q That was not the question.

Are you aware of any such solicitation ever taking place?

A No.

Q There is evidence before this Grand Jury, Mr. Vivelo, there were efforts made by a group of people in the neighborhood to raise money which would serve as a downpayment to purchase the house so that a white family would purchase this house using this money as a down payment and thereby prevent the black family from moving in.

Are you aware of any such efforts?

A I am not personally aware, no.

Q Did anyone ever solicit you to contribute money for the downpayment of the house?

A No.

Q Did you, yourself, ever solicit anyone else to contribute money to the downpayment?

A No.

Q A night or two after the real estate incident took place, were you ever on the street when a group of neighbors went around from house to house attempting to

raise such money?

A No.

Q Prior to the fire were you involved in any way in the solicitation of money with respect to 351 Milton Avenue?

A No.

Q Are you aware of any list that was kept of names of persons who had agreed to contribute money for this purpose?

A No.

Q Are you aware of the list having been destroyed after the fire?

A I am not aware of any list.

Q Are you aware of any time that you were out on the street, on Milton Avenue when neighbors walked up and down knocking on the various doors in furtherance of any effort with respect to the black family?

A Was I aware of people walking up and down the block in furtherance --

Q Of any effort to prevent the black family from moving in?

A Nobody knocked on my door.

Q Were you ever outside on the street when anyone of your neighbors were walking up and down the street,

knocking on door bells?

A No, I didn't see anybody knocking on door bells.

Q Have you finished your answer?

A Yes.

Q Mr. Vivelo, I would now like to direct your attention to the evening of the fire at 351 Milton Avenue which has been placed in the early morning of April 22nd.

Were you aware at that time the black family was about to move into the house?

A That they were ready to move in?

Q Yes.

A I don't think so.

Q Were you aware that that day they were seen moving some boxes into the house?

A Yes.

Q How were you aware of that?

A I guess somebody told me.

Q Didn't that indicate to you that they were in the process of moving in?

A Yes, that they were moving in but I didn't know they were moving into it that day.

It took me two weeks to move into my house.

Q In any event, you knew they were in the process of moving in?

A Yes.

Q What were your hours of duty on that day?

A Which day?

The day they moved the boxes?

Q The day of the fire.

The fire occurred at night, about two o'clock in the morning.

A I did four to twelve.

Q In other words, you worked from 4 p.m. to 12 midnight?

A Yes.

Q Where were you located at that time?

A Coney Island.

Q How long does it take you to get from Coney Island to your home on Staten Island at that hour of the night when you worked a four to twelve shift?

A Somewhere from twenty minutes.

Q Do you often work a four to twelve shift at that time?

A I work a four to twelve shift.

Q You work that shift every day?

A Sometimes I work an eight to four shift.

Q When you are working the four to twelve shift, when will you usually get home?

A 12:30.

Q When you come home, are you in civilian clothes or do you have your police uniform on?

A Civilian clothes.

Q You leave the uniform at the precinct?

A Yes.

Q And then come home in civilian clothes?

A Yes.

Q You arrived home usually about 12:30?

A Yes.

Q Do you recall what time you arrived home on the night of the fire?

A I imagine the same time.

Q That would be about 12:30?

A Yes.

Q What did you do when you got home?

A I tried to get into my house.

Q What happened?

A I was locked out.

Q You did not have the keys with you?

A I didn't have the keys, no.

Q Where were the keys?

A Inside the house.

Q Does your wife usually lock the house up at

night?

A Well, it depends. Generally it's -- no, generally she falls asleep on the couch or she goes to bed. She goes to bed.

Q You usually have a key with you; is that correct?

A Yes.

Q In the event your wife goes to bed and locks the door you can get in, is that right?

A Right.

Q You did not have the keys that night?

A Right.

Q Where were the keys?

A I have two cars. The house keys are on one car and I took the other car so it just happened I took the key ring without the house keys.

Q Does that happen often that you forget your keys?

A Yes.

Q What did you do that night when the door was locked?

A Banged on the door.

Q Then what happened?

A Then I went across the street to Mr. Anzalone's house and asked if I could use his phone and I called my

wife.

Q Was he up?

A Yes.

Q Was his wife up?

A I think so, yes.

Q Were they dressed?

A I don't recall.

Q You do not recall whether they were dressed?

A They had clothes on. I don't know how they were dressed. They both had clothes on.

Q You did not wake them up out of bed?

They were up?

A No.

Q What did you tell them?

A I asked if I could use the phone. I was locked out of my house.

Q What did they say?

A They said use the phone.

Q Did you call your wife?

A Yes.

Q Did you wake her up?

A I told her to open the door.

Q Did she say she would?

A Yes.

Q Then what happened?

A Then I went home and took my dog out.

Q Do you recall approximately what time it was that you left the Anzalone's house?

A A few minutes. I don't know how long it took.

Q You got home about 12:30.

What time would it have been you left?

A Maybe a quarter to -- I am only guessing. I wasn't clocking myself.

Q Approximately a quarter to one?

A Yes.

Q Did you have a cup of coffee?

A I might have. I don't recall. I might have.

Q What did you do when you left Mr. Anzalone's house at about a quarter of one?

A I went to my house.

Q You walked across the street and back into the front door of your house?

A I don't know how I got there but I walked to my house.

Q Then what did you do?

A I took my dog out.

Q When you say you took your dog out, exactly where did you take your dog?

A See the empty space over there (indicating) -- that's where the dog goes.

Q Would you please step down from there and point out exactly where you went at this time?

A (Indicating) Somewhere around here.

Q Pointing to?

A The side of my house.

Q And the swamp area below your house; is that correct?

A Right.

Q And what did you do?

A I went home.

Q Would it refresh your recollection any if I told you that when you were interviewed by the police detective, shortly after, about a week after the fire that you told him that you then let your dog out the back door, let the dog run loose?

I'm sorry.

That you let the dog out the door, back door and you walked to the front of the house with the dog, let the dog run loose, walked to the rear of the house and entered by the back and the dog returned two or three minutes later and you let the dog in the back door?

A Yes.

Q Is that about what happened?

A That's what I generally do.

Q In other words, you do not walk around a lot?

A I stay by our house and let the dog run, right.

Q Then what did you do?

A I went to bed.

Q If you got home about 12:30 and it was about a quarter of one when you left Anzalone's, when was it when you finally let out the dog and went to bed?

A Approximately one o'clock I guess. 1:15.

Q At any time after you left Mr. Anzalone's house and went back to your house, I assume at that point in time your wife had unlocked the door when you left Mr. Anazalone's house about a quarter of one and went back to your house?

It was unlocked?

A Yes.

Q Was that the front or back door?

A I don't recall.

Q In any event you went into the house and that is when you got the dog?

A Yes.

Q At any point from that point on prior to the fire that night, did you ever go back to Mr. Anzalone's house?

A Not that I recall.

Q Did you at any time walk across the street from your side of the street over to Mr. Anzalone's house and approached his front door?

A I don't recall if I did.

It wouldn't be unusual for me to go back and forth and to talk to him. I don't recall exactly what I did that night, but I am in and out of his house three times a day.

Q Would you have recalled it at the time you were interviewed shortly after the fire?

A Yes.

Q And if you did not say anything about going back to his house at that time would it be fair to state that you did not go back to his house at that time?

A Yes.

Q Do you have any recollection now of going back to his house that night?

A No.

Q To the best of your recollection did you go back to his house that night?

A No.

Q As I understand it the only time that you went to his house that night was the time when you first arrived home

from the police precinct; is that correct?

A The way I remember it, yes.

Q At any time that night do you recall a car being parked in Mr. Anzalone's side of the street in the vicinity of Mr. Barbieri's or Mr. Glaser's house?

Do you recall any such car being parked at that time while you were crossing the street?

A No, I don't recall.

Q Do you recall seeing Robert Glaser that night?

A I don't recall seeing him.

Q The fire took place somewhere around two or 2:15 that night, Mr. Vivelo.

At about 1:20 or 1:30 that night, did you go over to Mr. Anzalone's house and discuss the planning of th fire?

A No.

Q At about 1:20 or 1:30 that night did you go over to Mr. Anzalone's house and discuss engaging anyone to set the fire?

A No.

Q At about 1:20 or 1:30 that night did you go over to Mr.Anzalone's house and discuss the fact that if you were going to do anything about the black family moving in you better do it pretty quickly because they were in the

process of moving in?

A No.

Q At about 1:20 or 1:30 that night did you go walking from your house across the street to Mr. Anzalone's house for any reason whatsoever?

A I don't recall if I did.

Q If you did do anything like that on the night of the fire -- that is a night that is pretty hard to forget --

A The night of the fire is hard to forget.

Q So your events shortly before and after the fire should be pretty well fixed in your mind.

Would that be fair to state?

A Some events.

Q I mean you recall at this time this business about forgetting the keys and having to call your wife from Mr. Anzalone's house.

You recall that pretty thoroughly; isn't that correct?

A Yes.

Q Do you recall walking your dog pretty clearly; is that correct?

A Well, that's the standard way I walk my dog.

Q Do you recall walking it that night though; is

that correct?

A Yes.

Q Would it be fair to state if after you walked your dog you again went over to Mr. Anzalone's house, you would remember it?

A I wouldn't remember going over to his house if I did because I go there frequently.

Q You go over to his home frequently at 1:30 in the morning?

A Sometimes, yes.

Q Did you ever have occasion to cross the street from your house to the other side of the street for any reason that night after you made your first trip to Mr. Anzalone's house to call your wife?

A I don't recall if I did.

Q To the best of your recollection did you go from your house across the street towards Mr. Anzalone's house after your first visit?

A I don't recall if I went across the street or not.

Q I am directing your attention now, Mr. Vivelo, to the best of your recollection. I want the best of your recollection as to what you did that night after you walked the dog.

A To the best of my recollection I did not go back to his house.

Q To the best of your recollection after you walked the dog, did you go to bed?

A Yes.

Q Were you asleep at the time of the fire?

A Yes.

Q Was your wife asleep?

A I assume she was asleep.

Q How did you find out about the fire?

A She told me there was a commotion outside.

Q She woke you up?

A Yes.

Q Was she awake after you came back to the house after calling her?

A Was she awake?

Q Yes.

A Yes.

Q After you went to bed, after walking the dog was your wife awake at that time?

A She was back in bed.

Q Do you recall whether or not she was awake?

A She might have been awake.

Q In any event you fell asleep then and she woke

you after the commotion caused by the fire?

A Yes.

Q Then what did you do?

A I went to sleep.

Q After you were awoken by your wife?

A I looked out the window, I seen the fire engines. I went downstairs.

Q Did you go outside?

A Yes.

Q Where did you go when you went outside?

A To the street.

Q Did you go to anybody's house?

A I don't recall.

Q Do you recall whether or not you went and knocked on one of your neighbor's doors?

A I don't recall.

Q Do you recall whether or not you said to one of your neighbors "I thought you were out of the house"?

A I never said that to anybody.

Q You are pretty clear about that. You remember specifically that you did not say that on that night to anybody -- "I thought you were out of the house"?

A Right.

Q Why is it you are so clear about that?

A Cause why would I think anybody is out of the house.

Why would I know if anybody is home or not.

Q You seem to get a little aroused there.

Is there anything wrong with saying "I thought you were out of the house"?

Does that mean anything to you?

A No.

Q Is there a reason why you got so excited?

A No.

Q Why you raised your voice?

A Is there a reason why I raised my voice?

Q Yes.

A No.

Q If you had said that "I thought you were out of the house," would that in any way indicate in your mind that you knew something about the fire?

A If I ever said --

Q If, on the night of the fire you walked out of your house and went over to one of your neighbors's houses and found out he was inside and said "I thought you were out of the house," would that in any way indicate in your mind you might have had some knowledge about the fire taking place?

A No.

Q Mr. Vivelo, did you take part in the planning of the fire at 351 Milton Avenue?

A No.

Q Do you have any information as to who did take part in that fire?

A No.

Q Were you ever present at any discussion with respect to burning the house down?

A No.

Q Subsequent to the fire, did you ever hear anyone say anything which indicated knowledge as to who set the fire?

A Subsequent to the fire did I have -- could you repeat that.

I got lost on the question.

Q When you were out on the street the night of the fire, I assume there were some discussions with some of the neighbors?

A Yes, I guess there was conversation.

Q Was there any conversation as to whether or not the fire was an arson?

A No.

Q Was there any conversation as to who might have

set the fire?

A No.

Q Were you ever present when anybody said anything subsequent to the fire that indicated that he had knowledge as to who participated in setting the fire?

A No.

Q Do you believe now that anybody of your neighbors on Milton Avenue were involved in setting the fire?

A No.

Q Prior to the fire that night and after the time you arrived home, did you see anybody else out on the street?

A Not that I recall.

Q Subsequent to the fire did you ever have occasion to have a conversation with anyone of your neighbors at which you made a joking remark about the fire?

A Subsequent, after the fire?

Q Yes.

A No.

Q Did you ever say to anyone of your neighbors whether or not in a joking manner words to the following effect: "Should I send the rest of the gas to your house"?

A I think I recall the instance you are talking about.

If you want me to elaborate on it?

Q Please do.

A I think the women of the block were subpoenaed before the State Grand Jury and one of the neighbors is a very nervous and upset type of fellow -- Mr. Maddalone.

Q Is that Mr. Maddalone on 355 Milton Avenue?

A Right. I told him I would order a fifty five gallon drum sent over to his house of gasoline. That's the best I remember that conversation there.

Q What was the purpose or thrust of your making that statement?

A To make him more nervous. It was a little bit of harassment.

Q Why did you want to harass him?

A Because he is easy to get upset.

Q Do you think it was funny about the fire to the house?

A No.

Q What was your feeling generally toward the black family moving in?

A Neutral.

Q You did not have any feeling against the black family moving in?

A I said neutral.

Q Do you have any feeling against them moving in?

A I was neutral.

Q Mr. Vivelo, after the fire during the investigation by the various agencies, did you have any occasion to speak to Mr. Anzalone about the investigation?

A Yes.

Q Mr. Barbieri?

A I haven't seen Mr. Barbieri since he moved.

Q Mr. Maddalone?

A I met him once at the 84th Precinct. That's where he is assigned I think.

Q Did you discuss the investigation?

A I mentioned it to him -- not discuss it.

Q Did you ever discuss the investigation with Mr. Anzalone?

A Yes.

Q Did you ever discuss what your testimony would be before the Grand Jury?

A My exact testimony?

Q Did you go over what you would tell the Grand Jury with Mr. Anzalone?

A I had no idea of what kind of questions you were going to ask until you gave me the list the last time -- the questions you asked me the last time on the 15th.

Q Since the 15th, have you had any discussion about what your testimony would be with Mr. Anzalone?

A I spoke about it.

Q Did he ask you what you were going to say?

A I asked him what he remembered and he asked what I remembered.

Q Did you ever have any conversation with him about the idea of getting your stories to jibe?

A No.

Q Did you ever suggest to anyone or did anyone ever suggest to you that you should not say anything about each other's activities with regard to 351 Milton Avenue?

A No.

MR. DePETRIS: Any questions?

THE FOREMAN: Any questions?

A JUROR: Mr. Vivelo, in view of three separate acts of vandalism, the pistols through the windows, the water damage, the paint on the door and the fire, it seems to me that as a law enforcement officer you seem totally unconcerned about the danger to your own family.

You tell us your wife on occasion left the door open.

What provisions did you make, say with the fellow

law enforcement officers on that block?

I would be concerned until I knew that my house was not in danger.

TO Did you ever tell any of your fellow law officers to keep an eye on your wife and kids or did you on your own make an effort to investigate?

The two sides of your house are exposed to a clear access to any sort of fire or vandalism to you, but did you tell your wife at any time to be particularly careful or take particular steps after the hours of say eleven o'clock at night?

THE WITNESS: Not that I recall. I never made any statement.

A JUROR: Were you concerned when you went to night work?

THE WITNESS: Yes.

A JUROR: How concerned?

THE WITNESS: I am concerned now.

A JUROR: Did you make any special trips to your local precinct in Staten Island to get a patrol car or as a fellow officer did you ask --

THE WITNESS: There was a police car set

up across the street from my house after the fire for seven months.

A JUROR: What about the things before where you may have had a flake or weirdo running around?

Did you ever go to the local precinct at that time?

THE WITNESS: They were aware of the activity. They were aware of the incidents.

A JUROR: But did you do it on your own?

THE WITNESS: No.

A JUROR: Did you have particular concern that this could happen to you?

THE WITNESS: Oh, sure.

THE FOREMAN: Any other questions?

BY MR. DePETRIS:

Q Mr. Vivelo, there was a two week period that the windows were shot out and the time of the fire.

Did you have during that period of time, did you have any concern about your house or did you think whether it was done was because it was a black family?

The only house in danger was that house?

A I have five guns at home.

I carry one. There are two loaded revolvers in

y house at all times.

My wife knows how to pull the trigger.

MR. DEPETRIS: Any other questions?

THE FOREMAN: Any questions?

Thank you, Mr. Witness.

MR. DePETRIS: One thing before we go, Mr. Foreman.

I ask you whether or not you wish to do anything with respect to this witness with respect to section 16230?

THE FOREMAN: Will you please listen to this now?

THE SECRETARY: "Where in the same continuous court or Grand Jury proceeding which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section.

"If at the time the admission is made the declaration has not substantially affected the proceeding or it has not become manifest that such falsity has been or will be exposed."

Do you understand that?

THE WITNESS: Yes.

Can I have a copy of it though?

MR. DePETRIS: Your attorney will have a copy.

I suggest you go over it with your attorney.

It is called recantation provision.

Thank you.

(Witness excused.)

(Time noted 5:05 o'clock p.m.)

- - -

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

-against- 75-CR-751

ALBERT ANZALONE, ANTHONY VIVELO, NICOLAS LOMBARDI, ROBERT BARBIERO,

Defendants.

----------x

United States Courthouse
Brooklyn, New York

May 14, 1976
10:00 o'clock A.M.

b e f o r e :

HONORABLE EDWARD R. NEAHER, U.S.D.J.

HARRY RAPAPORT
ACTING OFFICIAL COURT REPORTER

THE COURT: Step down and Agent Savadel will take the stand.

V I N C E N T J. S A V A D E L, having been called as a witness, was duly sworn by the Clerk of the Court, took the stand and testified as follows:

THE COURT: Do you wish to conduct the direct examination first?

MR. DE PETRIS: Yes, your Honor.

THE CLERK: State your full name.

THE WITNESS: Vincent J. Savadel.

DIRECT EXAMINATION

BY MR. DE PETRIS:

MR. DE PETRIS: Shall I proceed?

THE COURT: Yes.

MR. DE PETRIS: Does your Honor want this done in front of the Jury?

THE COURT: Of course.

Q Mr. SAvadel, your the case agent on this case?

A Yes, I am employed by the Federal Bureau of Investigation and I am the case agent in this investigation.

I'm a resident agent of the FBI office in Staten Island, New York. I am responsible for the complete investigation of the case.

Q Did you conduct a number of interviews?

A With regard to the present case?

Q Yes.

A I did.

Q Was one of those interviewed Mr. Gerald Maddalone?

A It was.

Q Do you recall the first time you interviewed him was?

A The first time I participated in an interview with him with other individuals was in the office of the United States Attorney, the date, approximately, March fourth or fifth of '72.

Q Prior to that time had you spoken to Mr. Maddalone in his home?

A Yes, on approximately February 19th or 11th of 1972 -- I'm sorry, of 1974.

Q When was the next time you saw him?

A Well, several days later after I initially spoke to Mr. Maddalone I contacted him again.

May I explain why I had to recontact him?

Q First, on the first time, I show you Government's Exhibit 3500-4A, and I ask you if you recognize that exhibit?

(Exhibit shown to witness.)

A Yes, sir, this is a write-up of the first interview I had with Mr. Gerald Maddalone.

Q What date was that?

A The date appears to be February 19, 1974.

MR. CRECCA: We concede that we have that. We also concede that we have the interview of March fifth of 1974.

We concede that.

MR. DE PETRIS: May I proceed, your Honor?

THE COURT: Yes.

Q And page two of that exhibit, what is that?

A Page two of that exhibit is two days later I approached Mr. Maddalone a second time and this is a write-up of that particular contact with him.

MR. CRECCA: We concede that we have that.

Q On either of those occasions was there any lengthy interview of Mr. Maddalone?

A No, they were very brief. He didn't want to be interviewed.

Q He wanted to consult an attorney first?

A Yes.

MR. AGULNICK: May we the U.S. Attorney not lead the witness?

THE COURT: Yes, please.

Q When was the next time you saw Mr. Maddalone?

A The next time I saw Mr. Maddalone was in early

March of 1974. I believe that was in the U.S. Attorney's office.

Q May I show you Government's Exhibit 3500-4B? I ask you if you recognize that?

(Shown to the witness.)

A Yes, sir. This is the complete interview which I conducted with Gerald Maddalone which took place in his home on March the fifth, 1974.

MR. CRECCA: There has been a concession. We're not disputing that.

THE COURT: All right. Now we'll find out --

MR. DE PETRIS: May I proceed?

THE COURT: The questions are about notes.

MR. DE PETRIS: If we're going to do it, let's do it.

Q What was the date of that?

A This is dated March fifth, 1974.

Q That's the date of the interview; is that correct?

A Yes.

(Continued on the next page.)

ls.

BY MR. DE PETRIS:

Q That was after the conversation in the U. S. Attorney's office?

A Yes sir.

Q What, if any, notes did you take on that occasion?

A On the date of the interview, March the 5th, 1974, I took numerous notes during the course of my interview with Mr. Maddalone.

Q Would you tell the Court and the jury--- withdraw that. Not the Court.

Would you tell the jury what the practice is of the FBI concerning the notes?

A The practice of the FBI concerning investigative notes is as follows: When the notes are reviewed and dictated and the finished copy comes back, and that is proof-read by the agent who made the dictation, the notes, the actual investigative notes of the Agent may be destroyed, on authority of the Assistant Attorney General in charge of the Criminal Division of the Department of Justice.

There is no reason to retain those notes.

MR. AGULNICK: Objection to that, your Honor. The last comment. Move to strike the last comment.

THE COURT: Denied. Overruled.

BY MR. DE PETRIS:

Q Did you follow this established practice in this case?

A I followed that practice in this case as I have in other cases, yes.

Q Would you just tell us what you did with your notes? Did you dictate or -- withdrawn.

What did you do with your notes after the interview with Mr. Maddalone?

A After the interview with Mr. Maddalone, I dictated from my notes, resulting in this statement.

Q Whom did you dictate to?

A I can only tell you the stenographer's initials are KBM, King, Baker, Mary.

Q What happens after the notes are dictated?

A I retain my notes until I receive the copy of the finished dictation. I then proofread the finished copy of dictation.

Q Did you do that in this case?

A I certainly did, sir.

Q What did you do after you proofread the -- the dictation -- withdrawn.

The notes that you dictated, they were then typed up; is that correct?

A Yes. The notes themselves, my own notes, are destroyed after I proofread them.

Q I'm sorry, I didn't make the question clear. You dictated something to a stenographer; is that correct?

A That's right.

Q Is that then typed up?

A Yes sir.

Q And then did there come a time when you received that typed statement?

A Yes sir. I received the finished copy back.

Q What did you do when you received --

A I proofread my dictation.

Q What do you proofread it in connection with?

A To find out if it was as I had dictated from my notes.

Q Then what did you do?

A Then I destroyed my notes.

Q And Government's Exhibit 3500-4 is the typed statement which you proofread; is that correct?

A Yes sir, this is it.

MR. CRECCA: Mr. DePetris, are you saying 4-B?

MR. FLAMHAFT: 4-B.

THE WITNESS: 4-B.

MR. AGULNICK: 3500-4-B.

MR. CRECCA: 4-B.

MR. DE PETRIS: I don't know.

MR. FLAMHAFT: March 6th.

THE WITNESS: It looks like 4 parenthesis B close parenthesis, yes sir.

BY MR. DE PETRIS:

Q Is that copy that you have in front of you --

A This is merely a run-off xerox, yes sir.

MR. DE PETRIS: Judge, may we have the original marked? I guess that would be 12 for identification.

THE CLERK: Five-page document dated March 5, 1974 marked Government's Exhibit 12 for identification.

(So marked.)

THE COURT: Are we talking about the same 3500-4-B?

MR. DE PETRIS: Yes. This is the original, your Honor.

BY MR. DE PETRIS:

Q Mr. Savadel, I show you Government's Exhibit 12 for identification. Is that the original of 3500-4-B?

A This is the original statement signed by Mr. Maddalone, yes sir, with his initials on each page and

signed by him, witnessed by me and the other agent.

Q What did you do after that was typed up?

MR. FLAMHAFT: Your Honor, if the Government is going to ask the agent to satisfy us that that's an accurate and true transcription of what we have now, we will concede that is an accurate and true transcription of what Mr. Maddalone signed, was given to us.

MR. DE PETRIS: I understand that. I'm just asking Agent Savadel what he did with Government's --

THE WITNESS: With this?

MR. DE PETRIS: With Government's Exhibit 12 for identification after it had been typed up and proofread and your notes had been destroyed in the regular course of business?

THE WITNESS: I then enter it in the case file, in the exhibit section of my case file, and that's where it remains with this tag on it until it's required to be produced.

BY MR. DE PETRIS:

Q Did there come a time that statement was signed, after it's typed up and proofread?

A Yes sir.

Q What was done in that regard?

A I took this to Mr. Maddalone and he indicated on it that he had read the above statement consisting of this and four other pages, it is true and correct to the best of my knoweldge, written in his handwriting and signed.

MR. AGULNICK: We'll stipulate he signed the statement.

Q As of March of 1974, were those the only interviews that you had conducted of Mr. Maddalone?

A Other than the first attempted interviews of him, yes sir.

MR. DE PETRIS: I have no further questions.

CROSS-EXAMINATION

BY MR. AGULNICK:

Q Agent Savadel, you indicated before that you are the case agent on this particular matter; is that correct?

A Yes, that's correct.

Q Would it have been possible for other agents to have gone and obtained interviews of Mr. Maddalone without your knowledge of those?

A Absolutely not.

Q You heard Mr. Maddalone testify that he had lengthy interviews with you on three or four occasions; is that correct?

A I heard him testify to that, yes sir.

MR. DE PETRIS: Your Honor, I object to the characterization of the testimony. Mr. Maddalone testified he had lengthy interviews but he did not say each of the three or four occasions were lengthy interviews, that may be where the confusion is.

MR. FLAMHAFT: That's for the jury to decide.

MR. CRECCA: Judge, with due respect, that's a question of fact for the jury.

MR. DE PETRIS: That's what I was objecting to, Mr. Agulnick's characterization of the prior testimony.

THE COURT: As I say, members of the jury, at no time are these statements of counsel evidence in the case. Only the statements you hear from the stand under oath.

BY MR. AGULNICK:

Q You heard --

THE COURT: You are at liberty, as I say, to disregard all such statements, including I may make, because even what I say is not evidence in the case.

Q Agent Savadel, you heard Mr. Maddalone testify here today?

A I did hear him testify, yes, sir.

Q You did. It disturbed you to hear him testify that way; is that correct?

A Disturbed me in what sense, sir?

Q Well, it surprised you?

A In what sense, sir? I can't --

Q I'm asking you if it surprised you?

I withdraw the word disturbed.

A It neither disturbed nor surprised me. I don't understand your question, sir.

Q Neither disturbed nor surprised you?

A No sir.

Q Okay. Now you heard Maddalone say that there were three or four interviews with you?

A I heard him say that.

Q No matter what the duration were?

A I heard him say that, yes.

Q You heard him say that they lasted four hours?

A I heard him say that.

Q All totaled? Is that correct?

A Yes sir.

Q Now, it's your testimony here that you had an interview with him in the United States Attorney's office when you did take notes?

A That is only partially correct. I was among a group of individuals in the United States Attorney's office. I merely sat there and listened. I did not interview

Mr. Maddalone at that time and I did not take notes.

Q Did there come a time when you did take notes?

A Yes sir; the next day when I interviewed him.

Q You interviewed him at length on that next day; is that correct?

A I'm quite sure that was the date, yes sir.

Q And would it be fair to say that you took lengtny notes on that particular day?

A It would be safe to assume that, yes sir.

Q What did you do with those notes after you wrote them down?

A I think I just explained what I did with my notes, sir.

Q Well, you explained it to this gentleman. I'd like to hear it. This is cross-examination, sir.

A From my recollection, my notes which I took while interviewing Mr. MAddalone, were used to dictate a statement, which is this statement here.

Q How long after you took the notes did you receive this statement in a form that you considered finished enough to give to Mr. Maddalone to sign?

A I think it was the same day, sir. I interviewed --

Q The same --

A I interviewed Mr. Maddalone on the 5th and dictated it on the 5th and had him sign it on the 5th.

Q So you interviewed him at the United States Attorneys' Office, you went back to your office?

A No. I'm sorry, sir. I didn't interview him at the United States Attorneys' Office.

Q You interviewed him at his home?

A I interviewed him at his home, yes sir.

Q You took the notes, went down to the United States Attorney's Office?

A No, that's not accurate.

Q Went down to the FBI office?

A That's right.

Q And had them transcribed?

A Yes sir.

Q Okay. Then you came back and had him sign the statement on the same day?

A Yes. The interview occurred approximately 1:00 o'clock in the morning. That's why it's the same day.

Q 1:00 a.m.?

A I believe so, sir.

Q Was his attorney present during this interview?

A No sir. At his home, no sir.

MR. AGULNICK: Can I have just a moment,

your Honor?

THE COURT: Yes.

Q Sir, would you say this all happened on March 5th of 1974, the transcription of the notes, the signing and the taking of your original handwritten notes?

A I would say that the taking of notes occurred on March the 5th, typing of the statement occurred on March the 5th and the signing of that statement occurred on March the 5th, yes sir.

Q Well, I ask you to look at the top of the exhibit and ask you what the date of transcription is?

A March the 6th, 1974.

Q What does that make reference to, that date of transcription?

A It means the date that the typist typed up this FD-302, not this statement here. The typist typed up this statement and transcribed it on the 6th of March.

Q You mean, typed it over again on the 6th of March?

A Yes, for purposes of a report.

Q I see. Now, on February 19, you had a conversation with Mr. Maddalone?

A You have to refresh my recollection, counselor. February 19?

Q Yes. That would have been in your first conversation with him?

A The initial conversation occurred on that date?

Q Yes.

A Yes sir.

Q Was that a lengthy conversation that you had with him on that date?

A The initial contact and conversation with Mr. Maddalone was very brief.

Q And on February 22nd you had another conversation with Mr. Maddalone?

A I questioned the day, counselor, it may have been the 23rd.

MR. AGULNICK: I think the U. S. Attorney will concede it was --

MR. DE PETRIS: The 21st.

THE WITNESS: Probably the 21st.

Q The 21st or thereabouts?

A It was two days after the initial contact.

Q Was that a lengthy conversation?

A Very brief.

Q Did you ever have any conversations with Mr. Maddalone which you never reported anywhere?

A I'll have to think about that.

A I wish you would.

Q I'm quite sure the answer is no.

A But you have to think about it.

MR. DeBLASIO: Objection.

A I've had conversations with Mr. Maddalone as to sports and weather and so forth.

Q No. I'm talking about --

A I never spoke to Mr. Maddalone on the merits of this case, without recording it.

Q So there never would have been a time when you had a lengthy conversation with Mr. Maddalone where you wouldn't have made notes?

A No. I see your point, counselor. That's true. Correct.

MR. DOLNICK: I have no other questions of this witness at this time.

MR. [illegible]: Judge, may I?

THE COURT: Yes. If Mr. Dolnick doesn't object.

MR. DOLNICK: I yield to my colleague.

CROSS-EXAMINATION

BY MR. [illegible]:

Q Agent, in your various discussions with Maddalone, did you ever have opportunity to utilize a tape

recorder?

A I never used a tape recorder, no sir.

Q So we can put this all together, approximately how many times all totaled did you speak with Maddalone?

A During what period of time?

Q Throughout the entire investigation prior to the indictment in this case?

A All right. Let's see if we can reconstruct this.

MR. ACULNICK: Your Honor, with all due respect to the agent, he doesn't have to give us a running narrative. Let him answer the questions.

THE WITNESS: I cannot tell you how many times I spoke to Mr. Maddalone between February -- what is the first date, 19th?

Q Yes.

A I spoke to him on February the 19th, two days later on the 21st and the 5th of March, probably may have spoken to him before -- to introduce him to Mr. DePetris. I just don't recall how many times I've spoken to him.

(Continued next page.)

JP

SA/1

Q Sir, could you have spoken to him many other times that you do not presently recall?

A No, I haven't spoken to Mr. Maddalone that much, counselor. No, sir.

Q Would it be a fair statement, sir, that the notes that you originally took while simultaneously discussing the situation with Maddalone were destroyed because it is the practice of the FBI to permit their destruction? Is that a fair and accurate statement?

A It is the practice of the FBI to destroy notes following a transcription. Yes, sir.

Q These are the notes taken while you are simultaneously receiving the answers from a witness; am I correct?

A Yes, sir.

MR. PETERSON: Thank you, sir.

MR. GOGEL: May I, your Honor?

MR. PETERSON: Excuse me, your Honor. One more question.

BY MR. PETERSON (Cont'd):

Q Approximately how many notes were destroyed?

A How many pages of notes?

Q How many various pages?

A Well, that is very difficult to answer, counselor.

Q Could you guess, sir? 50, 100, 200?

A Oh, no, nowhere near --

Q Approximately?

A 25 pages, 15 pages. I don't know, counselor.

Q It could be 25 pages?

Thank you.

A Could be. It could be 50.

CROSS-EXAMINATION

BY MR. GOGEL:

Q Mr. Savadel, did you prepare a report concerning the meeting in the U.S. Attorney's Office?

A I don't recall that I did, sir. But I am not certain of that.

Q Do you have your notes to check to determine whether you made that report?

A I don't have any notes with me, no.

Q Is it your practice to normally make a report of all of your activities in the course of investigation?

A It depends on whether or not the activity is pertinent.

Q Was that a pertinent part of the investigation?

A I thought it was the turning point, yes, sir.

Q Then did you in fact make notes of that meeting

in the U.S. Attorney's office?

A No. Because I had actually walked out of the office, sir. I was only in there for a very short time. The discussion about -- if I may say so -- occurred mainly between Mr. Maddalone, his attorney and Mr. Boyd.

Q You made no notes for your file?

A No, sir.

MR. GOGEL: All right.

MR. AGULNICK: We have no more questions of this witness.

MR. CRECCA: Thank you, Agent Savadel.

THE COURT: You may step down.

THE WITNESS: You're welcome.

(Witness excused.)

MR. AGULNICK: For personal reasons, may I have five minutes, your Honor?

THE COURT: I might even make it until ten after twelve.

MR. AGULNICK: Thank you.

THE COURT: (Addressing Jury) That means you, too.

(Whereupon, the jury retired from the courtroom.)

(Recess taken.)

PENGAD Bayonne, N.J.
GOVERNMENT EXHIBIT
12 EH
75CR751

A 326

March 5, 1974
Staten Island, N.Y.

I, GERALD MADDALONE, residing at 362 Edgegrove Avenue, Staten Island, New York, do hereby make the following voluntary statement to VINCENT J. SAVADEL, who I know to be a Special Agent of the Federal Bureau of Investigation (FBI), and to FRED L. OTIS, who has identified himself to me as a Special Agent of the FBI. Agent SAVADEL furnished me with a copy of a form entitled, "Interrogation; Advice Of Rights - Your Rights", which he asked me to read. I understand my rights. I have consulted with an attorney with respect to my rights. I have made the decision that I will answer any questions truthfully and completely asked of me by the FBI, as such questions pertain to a fire which occurred in a dwelling at 351 Milton Avenue, Staten Island, New York during the early morning hours of April 22, 1972. No threats or promises have been made to me in order to induce me to make this statement.

I am married and reside with my wife, LISA, and three young sons. I am now employed as a Patrolman by the New York City Police Department, having entered into such employment in February, 1965. I am currently assigned to the 84th Precinct in Brooklyn, New York. I moved into my current residence in June, 1973. My prior residence was at 355 Milton Avenue, Staten Island, which I occupied between February, 1970 and June, 1973. My former home on Milton Avenue was an attached duplex, the other half of such duplex at the time being occupied by my sister-in-law, Mrs. NANCY KING at 357 Milton Avenue.

I first heard that a black family was going to move into the next house from me at 351 Milton Avenue from my wife, who had learned such information from a neighbor, Mrs. MAXINE NEIMAN. I understand that MAXINE had learned it from her husband PAUL, who had learned it from Mr. LEO GLASER at 349 Milton Avenue. GLASER's house is the half of the duplex attached to 351 Milton Avenue. I understand that LEO had been told about the black family moving into the house by ROY GEBHARDT, who had, once perhaps about four months, owned and lived in the house.

When GEBHARDT and his family moved from 351 Milton Avenue to a neighborhood not too far away, we were not on friendly terms. We had however, been friendly at one time, and I helped ROY on a number of projects around his house, one of which was

laying sod for his lawn. We had an argument over the children one day. I punished my oldest son based upon what ROY had told me. The next day ROY informed me that his own son had lied. Because I had punished my son, I felt very bad and told ROY to stay away from me after this.

After the GEBHARDT's moved, I never entered the premises he formerly occupied. He never gave me a key to the house. I never went to the basement of this house.

Because of the experience with GEBHARDT, it was my belief that he had arranged somehow to have the house occupied by a black as a matter of spite. I believed he was attempting to block bust the street.

By this time, it was general conversation around the neighborhood that a black family was moving into 351 Milton Avenue. Somehow the suggestion came about that the neighbors might buy the house in order to prevent the black family from renting. It had been learned from a meeting between some men on the block and the real estate man that the black family was going to rent the premises with an option to buy.

A number of men, including myself, then tried to get donations from people in the neighborhood in order to obtain enough money for a downpayment to buy the house. I made one solicitation for money. I went to the man who lives on Manila Avenue, directly behind by former home, Mr. JERRY CACCIAPUOTI, and asked him if he would be interested in donating some money. He said that he did not want to get involved. I made no other solicitations TO MY RECOLLECTION. However I know that Mr. GEORGE MILLER and Mr. NICK LOMBARDI did attempt to solicit money, and perhaps, but I am not sure, that Mr. TONY TORTORA did the same. However no money was ever collected. There were a lot of names on a list, held by LOMBARDI, who had been contacted for money. This list was on paper about the size of a steno pad. I cannot recall anything further about this attempt to solicit money. I know of no other groups or associations formed in the neighborhood. There was some suggestion to form a block association at one time, but when it was learned that a larger organization, the Oakwood Civic Association, was already in existence, the thought of forming a block association never went any further.

Concerning the incident regarding a group of men from

the neighborhood going to the WILLOWCREEK real estate office, my knowledge of this is as follows:

I was working on my automobile one afternoon when a group of men approached me. I remember definitely that JOHN MORREALE was among them. Possibly, but I'm not sure, also TONY TORTORA and GEORGE MILLER, from Milton Avenue. There was also some others who were not known to me, perhaps from another street in the neighborhood. They said that they wanted to find out from the real estate man what was going on with GEBHARDT's house. I told them I was not interested and did not go with them.

The returned sometime later. Either MORREALE or TORTORA said that GEBHARDT was in the office, and that a fight almost took place. One of them said that someone had threatened to punch someone in the mouth. It was learned however that the black family was going to rent with an option to buy the house. Based on my knowledge of this incident, MORREALE did not go on his own to the real estate office.

Concerning certain acts of vandalism against the house before the fire, I know the following:

I am the person who splashed paint on the front door of the house. I had the paint in my cellar. I don't know if anyone knows that I did this, since it was done in the dark.

J.M. Regarding the flooding of the house. One night a neighborhood, ROBERT BARBIERI, came to my house. He said that we are going to damage the house. I told him that he was crazy. I went outside and could hear water running. I did not see anyone else other than BARBIERI. I do not know who actually flooded the house, but BARBIERI knew that damage was going to happen when he came into my house.

Regarding the broken windows. One day I worked a 4:00 PM to midnight shift. I arrived home at about 12:30AM. I drove my car into my driveway. I noticed a group of men standing across the street. One of them waved me over. The men included TONY VIVELO, NICK LOMBARDI, AL ANZALONE, JOHN MORREALE, and perhaps, but not positive, ROBERT BARBIERI. Three of the men had CO-2 cartridge

J.M.

pellet guns, VIVELO, ANZALONE, and LOMBARDI. Someone said to look at the windows, meaning the windows at 351 Milton Avenue. I could see that they were damaged and as I stood there, one of the guns was fired by LOMBARDI. I made some remark about the windows being thermo-pane, that they were expensive to replace.

The group then went into TONY VIVELO's house. We sat at the kitchen table, and some had coffee. Seated at the table were myself, VIVELO, ANZALONE, LOMBARDI, MORREALE, and I believe, BARBIERI. I sat with my back to the wall and one of the men was sitting across from me working on the pellet gun. I now remember that BARBIERI was present. There was talk about what could be done about the black family moving into the house. There was a number of obsenities aimed against ROY GEBHARDT. VIVELO suggested that we could have the guy beaten up; that he could get two or three guys to beat him up and make it look like it wasn't planned; like a fake auto accident or something.

Someone in the group said that the only way to handle the situation was to burn the place down. The person who said this was either VIVELO or ANZALONE. There was nothing further mentioned about burning the house down. The men stayed in VIVELO's house for perhaps 30 minutes.

Concerning the fire. I had finished work at 8:00 AM on the Friday morning before the fire. The water damage had already occurred after the meeting in VIVELO's house. During the day, I heard from someone that the black family was planning to move into the house the next day. I stayed around my house the whole day and that night I watched television. As I often do, I lay on the living room floor. I fell asleep. My wife was outside and came into the living room and I was asleep. She went to sleep on the sofa. The next thing I know I hear my wife let out a scream and call my name. I jumped up and went to front window. I saw a fire engine out on the street. I opened the front door and saw the heavy smoke. I looked around the side of my house from the porch and saw fire and flames coming from 351 Milton Avenue. I yelled to my wife to get the kids and get out of the house. My sister-in-law, NANCY KING was now in the house. All hell was breaking loose. TONY VIVELO came to the door and said, "I thought

J.M.

you were out of the house". My wife, sister-in-law and myself got out of my house with the kids. VIVELO invited us into his house. I was extremely angry about the fire because I could not believe what was happening. Once in VIVELO's house, I went back to my house to get my German Shepard dog, "Velvet", who I had locked in. I brought her across the street and secured her in VIVELO's yard. His German Shepard, "DUKE", was not around.

I remember then going across the street to see LEO GLASER and his wife. They were outside their home and in a state of shock. LEO was saying, "Jerry, they did it, they did it." Mrs. GLASER was very upset.

A short time later I went into my backyard with ANZALONE to watch the fire. He said to me that "they" had given him a hard time because he didn't want to give his name. He said that he had reported the fire. I cannot recall ANZALONE's behavior at this time. I know I was so mad that I said that I would kill the S.O.B. who set the fire.

We stayed at VIVELO's house until most of the activity had died down and the fire was under control. We then returned to our own home with our children.

I cannot recall talking about the fire thereafter. The only reference I recall was what was supposed to be a joking remark by VIVELO one day. He said something like, "Do you want the rest of the gas delivered to your house" or words similar to this. I told him I didn't think his remark was funny.

I did not set fire to the house at 351 Milton Avenue. I do not know who set fire to the house.

I want to say that I refused to testify before the Richmond County Grand Jury without immunity because I was afraid that I would be asked about the details of the meeting at VIVELO's house, and if such was the case, I would have had to tell the truth.

I have read the above statement consisting of this page and four other pages. It is true and correct to the best of my knowledge.

Witnessed: Vincent Barrell, Special Agent, FBI, NYC 3/5/74

Jerold Maddalone
3/5/74

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

EVELYN VALENTI, being duly sworn, says that on the 24th day of January, 1977, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, a GOVERNMENT'S APPENDIX of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Harvey L. Greenberg, Esq.
16 Court Street
Brooklyn, N.Y. 11241

Michael P. Direnzo, Esq.
15 Columbus Circle
New York, N.Y. 10023

Evelyn Valenti

Sworn to before me this
24th day of Jan. 1977

Carolyn N. Johnson

Notary Public, State of New York
No. 41-[illegible]
Qualified in [illegible] County
Term Expires March 30, 1977

NOTICE that the within
or settlement and signa-
of the United States Dis-
office at the U. S Court-
n Plaza East, Brooklyn,
day of ,
'clock in the forenoon.

New York,
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tates Attorney,
for

KE NOTICE that the within
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States Attorney,
y for

Action No.

UNITED STATES DISTRICT COURT
Eastern District of New York

—Against—

United States Attorney,
Attorney for
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within
is hereby admitted.
Dated: , 19

Attorney for

FPI-LC-SM-8-73-7355